

RETURN DATE: APRIL 11, 2023	:	SUPERIOR COURT
	:	
AQUARION WATER COMPANY OF	:	
CONNECTICUT,	:	
	:	
<i>Plaintiff-Appellant,</i>	:	JUDICIAL DISTRICT
	:	OF NEW BRITAIN
V.	:	
	:	
PUBLIC UTILITIES REGULATORY	:	
AUTHORITY,	:	
	:	
<i>Defendant-Appellee.</i>	:	
	:	MARCH 30, 2023

**PLAINTIFF-APPELLANT’S MEMORANDUM OF LAW IN SUPPORT OF
EX PARTE REQUEST FOR STAY OF ENFORCEMENT OF AGENCY DECISION**

I. Introduction

For the first time in nearly a decade, Aquarion Water Company of Connecticut (“Aquarion” or “the Company”) filed a rate case with the Public Utilities Regulatory Authority (“PURA”) in the summer of 2022 to amend its base rate schedule. While inflation has ensured that almost nothing purchased today costs what it cost in 2013 – when Aquarion last filed a rate case – and despite Aquarion having invested over \$700 million of its capital into improving and expanding its service during that intervening period, PURA responded by reducing Aquarion’s rate schedule by almost \$2 million. In doing so, the agency not only caused the Company irreparable harm by lowering its base rate, but it also positioned Aquarion to suffer further harm by severely restricting its return on equity (“ROE”), thereby causing immediate damage to its credit rating, investment profile, and ongoing ability to obtain investment capital to maintain the system.

The Court will quickly see that PURA’s Final Decision is highly unusual. It cries out for judicial intervention. While the Commissioners’ vote was split 2 to 1, the Decision is perhaps most remarkable for the candid statements made by the two Commissioners other than the Chairman. Despite voting to approve the Decision, Commissioner Caron conceded that the

Decision is deeply problematic. Perhaps most notably, before even beginning to list his concerns, Commissioner Caron admitted that “this isn’t a decision I would have come to had I been the lead on it, but it is the decision we have.” *See* Tab A, at 10. For his part, Vice Chairman Betkoski dissented from the Decision in no uncertain terms. *See* Tab B. Among other observations, the Vice Chairman wrote that he “d[id]n’t think it was a stretch for the company . . . to say that this decision in places was arbitrary and capricious.” *Id.* He noted that, “[b]y reducing the ROE below usual standards[, PURA was sending] a massive signal to discourage vital investment in water infrastructure and protection for public health, environment, and safety.” *Id.*

As unusual as the Decision is for the stark criticisms offered of it, including by a Commissioner who voted for it, it is even more noteworthy for the actions of the Chairman. Although Aquarion’s Administrative Appeal identifies the Decision’s principal legal flaws, the Court should be aware that those flaws are not mere mistakes; they are, rather, part of a plan – the “tools” that the Chairman has adopted to undermine a proper rate request. Just four days after issuing the Final Decision, PURA Chairman Marissa Gillett appeared on the NBC Connecticut program “Face the Facts” where she expressed a need for new legislative authority, and bemoaned the fact that Aquarion’s corporate affiliate, Eversource, would not be before PURA on a rate case until 2025. As part of that discussion, the Chairman suggested that she wanted to get “under the hood and see[] what makes up [Eversource’s] rates.” Tab C. She then brought up the Aquarion Decision, issued earlier that same week, as an example. Specifically, Chairman Gillett proclaimed that

I think what you saw coming out of PURA just this last week, where *we exercised a lot of those tools* in the context of a water rate proceeding. That was really my attempt to show as the chief regulator in the state, what I could do if I was given the opportunity to go through a rate case with a lot of these utilities.

Tab C (emphasis added). That statement is a shocking admission from the PURA Chairman that she used the opportunity presented by this Decision to make an example of Aquarion, and to advocate for future legislation she is pushing. What her remarks confirm most starkly, however, is the disturbing fact that this Decision does not rest on a fair application of existing law, which is the only legitimate goal of a properly functioning administrative agency. It is intended instead to accomplish other ends beyond proper bounds.

Now burdened with this unprecedented, deeply flawed, and unconstitutional Decision, Aquarion has today appealed to this Court. By this motion, filed pursuant to Connecticut General Statutes §§ 4-183(f) and 52-1, as well as Practice Book § 4-5, Aquarion seeks to stay the enforcement of that March 15, 2023 Final Decision by PURA in Docket Number 22-07-01, Application of Aquarion Water Company of Connecticut to Amend its Rate Schedule, back to March 15, 2023, and forward during the pendency of this administrative appeal. That Decision, entered just fifteen days ago, violates Connecticut law in multiple ways – by imposing an unconstitutional confiscation, following unlawful procedures and making errors of law, and imposing an outcome that fellow commissioners recognized to be arbitrary and capricious. See Conn. Gen. Stat. § 4-183(j). In practical terms, the Decision requires Aquarion to reduce rates to customers long before this appeal will be decided. For the reasons explained below, however, an order staying the Decision and preserving the *status quo* on a temporary, *ex parte* basis, and, thereafter, following a hearing, is necessary if Aquarion’s appeal is to be meaningful.

The balance of the equities here weighs profoundly in favor of a stay to preserve the status quo. The risk of irreparable harm to Aquarion in the absence of a stay is clear and substantial and outweighs all other factors. Absent relief from this Court, Aquarion will be required to reduce its rates despite a pending appeal. Without a stay, that lost revenue will never be recovered in the likely event that Aquarion prevails, as Aquarion has no mechanism to compel the return of the

required rate reductions. The customers who would receive the reduced rates are not parties to this action, and case law makes clear that the base rates in question cannot be modified retroactively in order to make Aquarion financially whole. *See Office of Consumer Counsel v. DPUC*, 279 Conn. 584, 602 (2006) (“[A]s a general rate-making principle, retroactive rate making and single issue rate making are not permissible[.]”). In addition, the Vice Chairman correctly recognized that this Decision “will tell investors to spend their money elsewhere . . . not in Connecticut.” Tab B. As predicted, within two days of the release of this Decision, the Bank of America reported: “This Decision was worse than expected and falls below expectations of investors we have spoken to.” Tab D, at Ex. B. As noted below, other investment analysts reached similar conclusions.

PURA and Aquarion’s customers, on the other hand, will suffer no harm if a stay is in place, as Aquarion is prepared to post a bond committing not only to pay costs, but also to repay any applicable rate reductions with interest in the unlikely event PURA prevails in these proceedings. In the meantime, the Court, we respectfully submit, needs time to consider this alarming new Decision, which reflects an unprecedented exercise of PURA’s ratemaking authority that two of the agency’s own Commissioners openly recognized to be flawed.

II. Brief Procedural History¹

As noted, Aquarion, a water company serving 207,000 customer connections in 56 towns across Connecticut, last presented a rate case in 2013. *See Application of Aquarion Water Company of Connecticut to Amend its Rates*, Docket No. 13-02-20. Over the ensuing decade, Aquarion has poured over \$700 million in capital into the delivery of safe and reliable water to its

¹ For purposes of this motion, Aquarion incorporates by reference the allegations set forth in its accompanying Administrative Appeal, which more fully describes the procedural history of this matter and the claims of legal error.

expanding service areas and customers in Connecticut, who it has been serving continuously since 1857. In the summer of 2022, Aquarion began the process through PURA to amend its existing rate schedules.

After lengthy proceedings before PURA, the agency issued a Proposed Final Decision on February 16, 2023. Aquarion and various intervening parties responded to that proposal by filing written exceptions and presenting oral argument. After making significant changes to its Proposed Final Decision, PURA announced and issued its Final Decision on March 15, 2023.

Focusing on the big picture outcome of that Final Decision for purposes of this stay motion, PURA reduced Aquarion's ten-year-old base rates by \$1,969,517, and materially reduced the Company's return on equity ("ROE"). PURA imposed those outcomes despite the Company's massive investment of capital and the increased costs of doing business over the preceding decade, as well as Aquarion's continued need to attract equity to invest in new water infrastructure projects that are fundamental to maintaining safe and reliable water service and to complying with new, more stringent water quality standards. Within 48 hours of the issuance of the Decision, Moody's Investor Service called the Decision "credit negative" for the Company. The Moody's analysts anticipated this appeal, and concluded that, "[w]ithout mitigating actions by management, the outcome of the rate order could cause [the Company's] key credit metrics to decline further and weaken its credit quality." See Tab D, at Ex. C. Bank of America Securities, and other investment analysts raised similar concerns, which are reviewed in the accompanying Affidavit of Douglas P. Horton. See Tab D, at Ex. B. Seaport Research Partners issued a company update on Eversource two days ago that quoted the PURA Chairman's plainly biased TV interview noted above, and concluded that "PURA [had] backed into an 8.7% allowed ROE to solve for a rate decrease at Aquarion as PURA's Chair continues her regulatory and legislative campaign against [Eversource]." Tab D, at Ex. E. The investment community sees what is happening here, and

Aquarion's ability to receive the invested capital needed to maintain a safe and reliable water system is being irreparably harmed in the process.

III. These Facts Meet the Legal Standard to Stay PURA's Decision

Commissioner Caron provides a road map for why a stay is needed here. Among the many concerns the Commissioner expressed about the Decision was feeling “as if a number of the traditional expected rules of process have changed here in the docket. I can certainly see that the company is taken by surprise and could very well feel that the decision in places and determinations were arbitrary and capricious.” Tab A, at 11. The Commissioner explained that ROEs in Connecticut had previously been neither “exceptionally high [nor] exceptionally low,” which served as “indications to investment analysts that follow Connecticut companies that these were good companies to invest in. I don't think that will be true going forward after adoption of this decision.” Tab A, at 11-12. He opined that this “decision's ROE seems to be sending a message. I'm not sure what that message is, but it comes across as something like a punishment.” Tab A, at 12. “This decision I am concerned will discourage further ongoing investment by the company in the future.” *Id.* In short, Commissioner Caron's analysis of the Decision – which, remarkably, he voted *for*– highlights the ways in which Aquarion will suffer irreparable harm if this Decision stands, including by the future restriction of investment needed to maintain and improve its world-class water system.

Vice Chairman Betkoski dissented from the Decision, stating that “I've never seen a decision that excluded more items than this.” Tab B. He acknowledged that Aquarion was correct “to say that this decision in places was arbitrary and capricious.” *Id.* Vice Chairman Betkoski further recognized the “contemptuous and perhaps condescending” tone of the decision and emphasized that “there are items in this decision that are trying to make an example of this company.” Tab B. He particularly identified the ROE contemplated by the decision, which, he

stressed, represented “an over 80 basis point reduction” lower than even the Office of Consumer Counsel had suggested.

The comments of Commissioner Caron and Vice Chairman Betkoski not only reveal the disturbing problems with this Decision, they also point the way to its reversal. It is deeply flawed legally, the product of arbitrary and capricious decision making, and its imposition of unjust and unreasonable rates effects an unconstitutional confiscation from Aquarion. The Commissioners’ remarks make clear that this Decision merits no deference from this Court, and instead demands careful judicial review. Although PURA has attempted to enforce this unprecedented outcome before an appeal can even be heard, Aquarion respectfully submits that the Court should stay the Decision to allow itself and the parties time to carefully consider these important issues. With a bond in place, a stay will cause no harm to anyone involved.

IV. The Court Unquestionably Has the Authority to Issue the Requested Stay

The Court is authorized to grant a stay preserving the *status quo* on an *ex parte* basis as a matter of equity pursuant to Connecticut General Statutes §§ 4-183(f) and 52-1:

While § 4-183... authorizes the administrative agency or the reviewing court to grant a stay “upon appropriate terms,” the Superior Court’s exercise of its equitable powers in such instances is in fact much broader, being derived from General Statutes § 52-1. This latter provision authorizes the Superior Court to “administer legal and equitable remedies in favor of either party in one and the same civil action [including administrative appeals] so that legal and equitable rights of the parties may be enforced and protected in one action.” The Superior Court’s jurisdiction to act upon an application for a stay and a restraining order [is] derived from its general equitable powers as enumerated in § 52-1...”

Park City Hosp. v. Commission on Hospitals and Health Care, 210 Conn. 697, 701 (1989).

Section 4-183(f) confers “broad authority to fashion appropriate relief to protect the interests of all those involved during the pendency of an administrative appeal.” *Griffin Hospital v. Commission on Hospitals & Health Care*, 196 Conn. 451, 455 (1985). In deciding whether to issue a stay, courts are charged with balancing the equities by considering the following factors:

“(1) the likelihood that the [applicant] will prevail; (2) the irreparability of the injury to be suffered from immediate implementation of the agency order [under review]; (3) the effect of a stay upon other parties to the proceeding; and (4) the public interest involved.” *Id.* at 456.

The Supreme Court has “analogized the process of granting or denying a stay under § 4-183 pending the outcome of the administrative appeal to the process of granting or denying a temporary injunction to preserve the status quo pending the full hearing on the merits of a case.” *Waterbury Teachers Ass’n v. Freedom of Information Com’n*, 230 Conn. 441, 451 (1994). A preliminary injunction functions “to maintain the status quo, pending a final determination on the merits,” *Gerdis v. Bloethe*, 39 Conn. Supp. 53, 55 (1983), and is “a matter committed to the sound discretion of the court.” *Emhart Indus., Inc. v. Amalgamated Local Union 376, U.A.W.*, 190 Conn. 371, 406 (1983). Thus, injunctive relief, and, analogously, a stay of administrative proceedings, should be granted if there is “either a likelihood of success on the merits or a sufficiently serious question going to the merits of the claim as to make it a fair ground of litigation plus a balance of hardships that tips decidedly in favor of the moving party.” *Bielonko v. Blanchette Builders, Inc.*, No. CV98-0581188-S, 1999 WL 68650, *5 (Feb. 2, 1999, *Lavine, J.*) (quoting *Malkentzos v. DeBuono*, 102 F.3d 50, 54 (2d Cir. 1996)); *Waterbury Teachers Association*, 230 Conn. at 446. Here, every factor weighs in favor of a stay to review this troubling Decision.

A. Aquarion is Likely to Prevail on the Merits of this Appeal

One need only read the comments of Commissioner Caron and Vice Chairman Betkoski, *see* Tab A, to recognize that Aquarion is likely to prevail on the merits of this appeal. PURA’s decision to reduce ten-year-old base rates in this docket came by way of a split 2-to-1 Decision in which even the second Commissioner to vote in favor of it acknowledged its numerous defects, and candidly admitted that he would not have rendered the Decision had he been the lead on the docket. That statement alone speaks volumes about the likelihood that Aquarion should prevail

on this appeal. The problems with this Decision are pervasive, as they are now laid out in detail in Aquarion’s accompanying Administrative Appeal. A summary of some of those legal concerns is reviewed here.²

First, in a profound overreach of constitutional magnitude, PURA’s Decision fails to meet the required constitutional threshold for “just and reasonable rates.” As discussed in detail in the Administrative Appeal, the regulator has decided to reduce Aquarion’s existing ten-year-old base rates by nearly \$2 million – leaving the new rates below what had been deemed a just and reasonable rate back in 2013, when both its system and customer base were much smaller (Aquarion having invested \$700 million in capital since then) and the costs of goods and services much less expensive. PURA has suggested that Aquarion’s ROE will be 8.7% after implementation of those reduced rates. Commissioner Caron found that level of ROE “appalling,” offering that an appropriate range was 9.16% to 9.63%. See Tab A, at 11, 12. Vice Chairman Betkoski decried the reduced ROE reflected in the Decision as “a massive signal to discourage vital investment in water infrastructure and protection for public health, environment, and safety.” Tab B. What neither Commissioner knew at the time, however, was that the implementation of the rate reduction on Aquarion’s existing ROE would leave the Company’s investors with an actual earned ROE of only 6.79%. See Tab D. The Decision, in other words, would force Aquarion to operate at a level that is substantially less than what was reasonable nearly a decade ago with no recognition of the extensive investments of over \$700 million in the system implemented by Aquarion in the interim. The suggestion that it costs less to provide hundreds of thousands of customers with water service in 2023 than it did in 2013, or that not a single one of Aquarion’s

² The attached affidavit of Debra A. Szabo, CPA, Aquarion’s Director of Rates and Regulation, quantifies the irreparable harm sustained by Aquarion in connection with the specific errors raised in Aquarion’s Administrative Appeal. See Tab D, at Ex. A. Those damages are of course directly relevant to the irreparable harm sustained by the Company. See section IV-B.

cost items were reasonable and prudent, is nothing short of absurd, and the resulting ROE amounts to an unconstitutional confiscation. PURA's unwarranted assumption that it costs less in 2023 than it did in 2013 to provide safe and reliable water service is especially absurd given that Aquarion increased the number of customers it serves since 2013 from 185,000 to 207,000 metered customer connections and expanded service from 47 to 56 municipalities over that ten year period. See Tab D, at Ex. A ¶ 10.

The Decision is independently flawed for arbitrarily denying any recovery of more than \$48 million in capital additions completed in the final quarter of the 2022 calendar year. To do so, PURA adopted a bogus procedural defect as purported cover. The Administrative Appeal explains that PURA's alleged justification was both factually incorrect and amounted to a reversal of the approach PURA had taken in its Proposed Decision, as well as less than two years earlier in 2021 when it fully credited materials submitted in the very same fashion by the Connecticut Water Company, the state's only other large private water company. Indeed, Vice Chairman Betkoski acknowledged that a reviewing court would not need to defer to agency expertise here because "there were new rules being applied to Aquarion in this docket that were not applied to others. Specifically, the recent CT Water Case." Tab B. This blanket rejection of the record on this point is further undermined by the fact that PURA credited the same type of evidence to support other capital additions submitted by Aquarion. *See id.* By changing the rules without notice or warning, PURA's actions embody arbitrary and capricious behavior, as noted by both Vice Chairman Betkoski and Commissioner Caron.

Elsewhere, the Decision arbitrarily rejected data and refused to correct basic mathematical errors. And, because the Chairman's post-Decision media commentary demonstrates that she views rate cases as vehicles for *her* to set examples and to bolster *her* legislative agenda in the guise of utility regulation, judicial review is needed to serve as a check against such improper

behavior. See Tab C. Given the unprecedented and unsupportable nature of the Decision, a stay that will not cause any harm to any party in this case is essential to ensure fair adjudication of this appeal.

“In determining the likelihood that the appellant will prevail, the court need only find that there is a reasonable degree of probability of success.” *Transportation Gen., Inc. v. Comm’r of Transp.*, No. CV95-0705578-S, 1995 WL 27371, *1 (Conn. Super. Jan. 17, 1995) (emphasis added) (quoting *Griffin Hospital*, 196 Conn. at 455). Success on appeal requires that the applicant satisfy one or more of the criteria set forth in Section 4-183(j), which authorizes relief where, as here, the administrative findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and/or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Aquarion should succeed on each of those grounds.

B. Aquarion Will Suffer Irreparable Harm if the Decision is Not Stayed

Left to be implemented without a stay, this unprecedented Decision would cause Aquarion to suffer irreparable harm. It will be required to lower its rates with no prospect of recovering those reductions in the future should the Decision be reversed. In the meantime, the company will continue to suffer the damage brought on by its credit rating and investment profile having been downgraded by the unconstitutional confiscatory reduction of its ROE. See Tab D.

On the other hand, neither PURA nor Aquarion’s customers will be harmed by the entry of a stay. PURA has no direct economic interest in this case, so a stay does it no harm. And, unlike Aquarion itself, the company’s customers can and will be made whole, with interest, in the event the Court finds against Aquarion, as the accompanying bond assures. Courts have sensibly

recognized that both the prospect of unrecoverable economic losses and the practical vitiation of legal rights are ample grounds for the entry of a stay or injunctive relief preserving the status quo.

In *Connecticut Life & Health Ins. Guaranty Ass’n, v. Daly*, 35 Conn. Supp. 13 (1977), for example, the court granted and extended a stay of proceedings pending its resolution of an administrative appeal and a declaratory judgment action brought under the UAPA. In that case, the insurance commissioner, interpreting a previously untested statute, ruled that the plaintiff, an insurance association created by the General Assembly to protect policyholders in the event of any insurer’s financial collapse, was required to pay in full to all affected individual policyholders all policy obligations and values up to \$25,000 in the event of a financial impairment of an insurer. The plaintiff disagreed with that interpretation, appealed it under the UAPA, and sought a stay of enforcement of the insurance commissioner’s decision. In balancing the equities, the court held that where “large sums of money may have to be disbursed . . . to individual policyholders . . . [t]here is a real and substantial risk that those disbursements may not be recoverable by the [applicant] if it ultimately succeeds on the merits.” *Id.* at 17. Accordingly, the court extended the stay because “[e]xtension of the stay order would preserve rather than alter the status quo.” *Id.*

Likewise, in *PMC Property Group, Inc. v. Public Utilities Regulatory Authority*, 63 Conn. L. Rptr. 121, 2016 WL 5339453, *7–*8 (Conn. Super. Aug. 22, 2016), *aff’d* 189 Conn. App. 268 (2019), the court imposed a stay where PURA ruled that a landlord had engaged in illegal submetering at a multiuse building and ordered the landlord to return to each of its tenants all payments collected for submetering electricity. Even though the total amount of the rebates at issue paled in comparison to the rate reduction at issue here, the court, *Cohn, J.*, properly granted a stay of enforcement on the condition that rebates could be paid into escrow until the court could determine whether the applicable statute authorized PURA to order rebates in addition to penalties. *Id.*

Applying the same equitable principles, the courts of numerous other jurisdictions have held that unrecoverable economic losses are a quintessential form of irreparable harm that can be effectively prevented through a stay. Although general economic loss may “not, in and of itself, constitute irreparable harm,” *ConverDyn v. Moniz*, 68 F.Supp.3d 34, 46 (D.D.C. 2014) (quoting *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985), that principle applies only when losses can be recovered in the future. “[A]n exception to the general rule exists when it is shown that a money judgment will go unsatisfied absent equitable relief.” *Alvenus Shipping Co., Ltd. v. Delta Petroleum (U.S.A.) Ltd.*, 876 F. Supp. 482, 487 (S.D.N.Y. 1994) (citing cases). Thus, for example, “if a movant seeking a preliminary injunction will be unable to sue to recover any monetary damages against a government agency in the future . . . financial loss can constitute irreparable injury.” *Nat’l Mining Ass’n v. Jackson*, 768 F. Supp. 2d 34, 52 (D.D.C. 2011); see also *Bracco Diagnostics, Inc. v. Shalala*, 963 F. Supp. 20, 29 (D.D.C. 1997). Ultimately, “[i]f a plaintiff has shown that financial losses are certain, imminent, and unrecoverable, then the imposition of a preliminary injunction is appropriate and necessary.” *Nat’l Mining Ass’n*, 768 F.Supp.2d at 53 (emphasis added).

In the same vein, the courts have recognized that a merely theoretical recovery “at law” is not an “adequate remedy” that might otherwise prohibit injunctive relief. See, e.g., *Connecticut National Bank v. Trans World Airlines, Inc.*, 762 F. Supp. 76, (S.D.N.Y. 1991) (despite TWA’s claim that “CNB will be adequately protected if it secures a money judgment against it,” TWA was ordered to specifically perform a contract because “[t]he suggestion that by obtaining a money judgment CNB will be adequately protected is nothing short of specious. TWA has been teetering on the brink of bankruptcy for years and it is unlikely that it possesses the cash in its coffers to satisfy such a judgment.”); *Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 206 (3d Cir. 1990) (“the unsatisfiability of a money judgment can constitute irreparable injury”); *Decker v.*

Independent Shares Corp., 311 U.S. 282, 290 (1940) (where defendant “was insolvent and its assets in danger of dissipation or depletion... the legal remedy against the [defendant], without recourse to the fund in the hands of [a third party], would be inadequate.”); *Maids International v. Ward*, 194 B.R. 703, 711 (Bankr. D. Mass. 1996) (difficulty in collecting a monetary judgment should be considered in determining whether damages are inadequate because “the remedy at law, in order to exclude a concurrent remedy at equity, must be as complete, practical and as efficient to the ends of justice and its prompt administration”) (quoting *Walla Walla City v. Walla Walla Water Co.*, 172 U.S. 1, 12 (1898)); *Miller v. LeSea Broadcasting, Inc.*, 87 F.3d 224, 230 (9th Cir. 1996) (specific performance may be ordered when no adequate remedy at law exists due to a defendant’s lack of solvency); *Alvenus*, 876 F. Supp. 487–88 (defendants enjoined from disposing of funds pending outcome of foreign arbitration where plaintiff “demonstrated that absent equitable relief from [the] Court, a money judgment in the [foreign] arbitration will go unsatisfied [and] [t]here is nothing in the record that even remotely suggests that [the defendant] could pay [the plaintiff’s] likely award in the [foreign] arbitration”); *see also* Restatement (Second) of Contracts § 360 (“In determining whether the remedy in damages would be adequate, the following circumstances are significant: . . . the likelihood that an award of damages could not be collected.”).

Here, the equitable considerations recognized by the courts dictate that a stay of enforcement of the rate reduction should enter. Absent relief, Aquarion will be deprived of a meaningful opportunity to remedy the legal errors it claims on appeal, and will thereby suffer irreparable harm.

Moreover, the Decision will make it very difficult for Aquarion to attract equity investment in future projects. As reflected in the attached Affidavit of Douglas P. Horton, *see* Tab D, implementation of the proposed rate reduction will bring the Company’s actual earned ROE to 6.79%, about 250 basis points below the level that Commissioner Caron thought necessary to

convince investment analysts “that these were good companies to invest in.” Tab A, at 11. The result, as Vice Chairman Betkoski predicted, is that this Decision “will tell investors to spend their money elsewhere. Not in Connecticut.” Tab B.

What is more, the relative financial impact of a stay order weighs in favor of relief. Should Aquarion’s appeal fail, PURA itself will suffer no harm, and customers would be compensated fully for any delay with interest on credits as mandated in PURA’s order. However, in the absence of a stay, Aquarion will be required to implement rate reductions millions of dollars below what had been a reasonable rate 10 years ago, and will have no ability to recoup those substantial losses even if it succeeds in this appeal because retroactive ratemaking is disallowed. *See, e.g., Connecticut Light & Power Co. v. Dep’t of Pub. Util. Control*, 40 Conn. Supp. 520, 536 (Super. Ct. 1986) (“[r]ate-making is necessarily present and prospective. . . . Rates are established for the future and it is the generally accepted rule that retroactive rate-making is beyond the power of a regulatory commission.”); *E. Connecticut Reg’l Water Co. v. Connecticut Dep’t of Pub. Util. Control*, 25 Conn. L. Rptr. 108, No. CV 970065168S, 1999 WL 545735, at *7 (Conn. Super. Ct. July 16, 1999).

For all of these reasons, the balance of equities in these circumstances weighs heavily in favor of a stay.

C. No Party to the PURA Docket or Aquarion Customer Will Be Harmed by an Order Maintaining the Status Quo While the Court Hears This Appeal

To repeat, a stay of enforcement of the rate reduction contemplated by this Decision will harm no party or intervenor. PURA, as noted, has no direct financial interest in the outcome of the case. And, Aquarion’s customers’ bills will maintain the current rate structure should a stay be ordered, and, should the appeal fail, Aquarion will reimburse those customers in full – for all

applicable rate reductions to which they are entitled along with interest. Thus, a stay will not harm any party affected by this appeal in any way.

Aquarion has brought this appeal promptly, just over two weeks after the Decision was issued, and well in advance of the 45-day statutory time period. *See* Conn. Gen. Stat. § 4-183(c). And, once PURA produces the administrative record, *see id.*, § 4-183(g), Aquarion stands ready to proceed with a briefing schedule that will allow for argument and a prompt decision on the merits. This expeditious approach further counsels in favor of pausing a significant rate reduction that should be vacated after this Court completes its appellate review.

D. The Public Interest is Not Harmed By a Stay

The final inquiry for a stay asks whether the imposition of a stay is consistent with, or harmful to, the public interest. This Administrative Appeal presents important questions related to a regulator’s attempt in 2023 to reduce utility base rates to below 2013 levels, while arbitrarily declining to follow established law. Ensuring that the regulated community is given a meaningful – not academic – opportunity to advocate for fair treatment under such circumstances is fundamentally important to public confidence in both appropriate agency conduct and judicial review. Here, it benefits all customers, electric distribution companies, and the public at large to be able to repose confidence in the statutory decision-making process.

More than that, PURA is statutorily obligated to ensure that utilities like Aquarion are charging a just and reasonable rate that is appropriate for both the customers and the utility. It is of course facile and popular to paint the utility as a “bad guy” in ratemaking procedures. But, regulators are called to pursue a more mature approach. That is because the public’s real interest lies in continuing to receive a safe and reliable supply of water at a fair price. Given the massive amount of capital required to operate a modern water utility, PURA is obligated to ensure that “the level and structure of rates be sufficient, but no more than sufficient, to allow public service

companies to cover their operating costs including, but not limited to, appropriate staffing levels, and capital costs, to attract needed capital and to maintain their financial integrity. . . .” Conn. Gen. Stat. § 16-19e(a). In other words, PURA must consider what level of return on capital is sufficient to allow Aquarion to maintain the level of investment needed to provide safe, reliable water. PURA has failed to do so in this docket – a concern recognized by two of the three Commissioners – and the public will therefore be best served by allowing the Court time to examine the Decision. At a minimum, the public interest will not be harmed by the grant of a temporary stay of enforcement. This is not a circumstance where any irreparable harm will befall the public given the Company’s bond commitment. *Cf. Adams v. Greenwich Water Co.*, 138 Conn. 205, 220 (1951) (application by riparian owners to enjoin diversion of river water by water company denied where doing so would adversely affect public interest due to existing drought).

V. CONCLUSION

For all the foregoing reasons, Aquarion requests that the enforcement of the Decision be stayed back to March 15, 2023 on a temporary *ex parte* basis, and then upon a hearing for the remainder of the pendency of this Appeal.

THE PLAINTIFF-APPELLANT
AQUARION WATER COMPANY OF
CONNECTICUT

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– Its Attorneys –

Tab A

**CERTIFIED
COPY**

In The Matter Of:

*Application of Aquarion Water Company of
Connecticut to Amend Its Rate Schedule*

Regular Meeting

March 15, 2023

*BCT Reporting LLC
55 Whiting Street, Suite 1A
Plainville, CT 06062
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STATE OF CONNECTICUT
PUBLIC UTILITIES REGULATORY AUTHORITY

****PURA REGULAR MEETING****

VIA ZOOM AND TELECONFERENCE

Regular Meeting held on Wednesday, March 15, 2023,
beginning at 10:02 a.m., via remote access,
transcribed from audio file.

H e l d B e f o r e:

MARISSA P. GILLETT, Chairman

JOHN W. BETKOSKI, III, Vice Chairman

MICHAEL A. CARON, Commissioner

Reporter: Lisa Warner, CSR #061

A p p e a r a n c e s :

PURA Staff:

JAMES VOCOLINA

USSAWIN R. BUMPEN

1 THE CHAIRMAN: Good morning. Welcome
2 to a regular meeting of the panel of utility
3 commissioners and staff of the Public Utilities
4 Regulatory Authority, or PURA, today, Wednesday,
5 March 15th at 10 a.m. by remote teleconference.
6 My name is Chairman Marissa Gillett, and I'm
7 joined virtually today by my colleagues, the Vice
8 Chairman Jack Betkoski and Commissioner Michael
9 Caron.

10 We have a three-part regular meeting
11 agenda today. We will begin with our regular
12 calendar before turning to our consent calendar.
13 We also have scheduled for the end of today's
14 agenda an executive session regarding a FERC
15 settlement which I will explain when we get to
16 that portion of the agenda. But for now we will
17 turn to the regular calendar.

18 The first item on today's regular
19 calendar is Docket No. 22-07-01, the Application
20 of Aquarion Water Company of Connecticut to Amend
21 its Rate Schedule. I will turn to Mr. Jim
22 Vocolina on behalf of Authority staff to present
23 the decision that he is recommending and that the
24 panel of utility commissioners adopt this morning.

25 So Mr. Vocolina, please. Sorry, Jim, I

1 muted you.

2 MR. VOCOLINA: There we go. Good
3 morning, Chair Gillett, Vice Chair Betkoski and
4 Commissioner Caron. On August 26, 2022, the
5 Aquarion Water Company of Connecticut filed a rate
6 application with PURA in accordance with
7 Connecticut General Statutes, Section 16-19 in
8 Docket 22-07-01.

9 Aquarion currently provides water
10 service to approximately 207,000 customers in 56
11 Connecticut municipalities. Aquarion initially
12 requested a return on equity of 10.35 percent and
13 an annual revenue requirement of \$226 million but
14 later increased its request to \$236 million. If
15 approved, the requested revenue requirement would
16 have increased residential customer annual bills
17 by about 9 percent, on average, over current rates
18 for approximately \$61 per year.

19 The Authority conducted an extensive
20 investigatory process in Docket 22-07-01 involving
21 four public comment hearings, several days of
22 field audits and inspections, seven in-person days
23 of evidentiary hearings, two days of Late-File
24 exhibit hearings, oral arguments, and the issuance
25 of several hundred discovery requests.

1 Through today's decision, the Authority
2 approves a return on equity of 8.7 percent and an
3 annual revenue requirement of \$196 million for the
4 rate year commencing on March 15, 2023. The
5 authorized revenue requirement is an approximate
6 \$40 million reduction from Aquarion's request as
7 they failed to meet their burden of justifying the
8 requested revenue requirement and return on
9 equity. The Authority's determination will
10 decrease customers' bills beginning on March 15,
11 2023 by about 11 percent, on average, compared to
12 current rates or approximately \$67 per year
13 inclusive of the reduction of the water
14 infrastructure conservation, WICA, adjustment to
15 zero.

16 Specifically, the Authority declined to
17 include in the approved revenue requirement
18 several buckets of expenses that Aquarion failed
19 to adequately demonstrate are prudent, reasonable
20 and in the best interest of ratepayers. These
21 buckets include but are not limited to operation
22 and maintenance, O&M costs, including continued
23 annual costs based on prior periods, and
24 adjustments to O&M expenses and capital
25 expenditures. Examples include \$4.9 million

1 associated with Aquarion's share of costs linked
2 to its 2017 merger with Eversource, \$390,000 in
3 outside legal costs related to this rate case,
4 \$300,712 in industry and non-industry membership
5 dues, and \$37,812 in entertainment expenses, among
6 others.

7 Importantly, this decision does not bar
8 the company from participating in industry
9 advocacy efforts, nor does it penalize or preclude
10 Aquarion from investing in the local communities
11 it serves. Rather, the decision finds that such
12 expenses that do not contribute to the safe,
13 reliable and efficient provision of water service
14 or otherwise provide discernable value to a
15 utility's customers should not be the burden of
16 ratepayers, particularly when Aquarion is
17 achieving public goodwill for such endeavors made
18 in its name. Denying these expenses from recovery
19 through rates does not prohibit the company from
20 engaging in such activities. Aquarion may instead
21 fund such activities with shareholder funds.

22 The Authority also did not allow
23 going-forward adjustment for chemical expense that
24 would have quadrupled the cost of these chemicals
25 to ratepayers. PURA found that this request was

1 based on projections that Aquarion's own suppliers
2 advised were not reliable and that ultimately the
3 public interest is not served by allowing Aquarion
4 to receive increased revenues to cover speculative
5 costs.

6 Lastly, the Authority limited its
7 approval of infrastructure eligible for recovery
8 through rates at this time to facilities in use as
9 of the application date of August 29, 2022.

10 Aquarion sought authorization for further
11 infrastructure expenses for facilities that were
12 not in service at the time the application was
13 submitted which would have raised the annual
14 revenue requirement significantly.

15 The traditional utility regulatory
16 principle of used and useful is applied when
17 reviewing the incorporation of prior capital
18 expenditures into customers' rates. This simple
19 standard means that investments must be both in
20 service and provide value to ratepayers in the
21 drinking water distribution system. The company
22 did not meet its burden to prove that the
23 facilities associated with any infrastructure
24 investments made after the application was filed
25 were used and useful.

1 Despite failing to meet the burden of
2 proving the proposed rate is just and reasonable,
3 Aquarion continues to carry a statutory obligation
4 to provide safe, adequate and reliable service.
5 Aquarion also is obligated to operate efficiently
6 and to prudently plan and invest in drinking water
7 infrastructure. To meet these obligations
8 Aquarion can avail itself of a unique interim rate
9 adjustment mechanism, WICA, in addition to the
10 annual revenue requirement authorized in this
11 decision. By law, WICA allows water companies to
12 invest up to 10 percent of their approved revenue
13 requirement between rate cases and up to 5 percent
14 in a given year. Each rate case resets this cap,
15 meaning Aquarion may seek recovery for additional
16 eligible water infrastructure investments made
17 between the date of this decision and the next
18 rate case up to \$19.6 million.

19 The Authority authorized a new 3-tier
20 pricing structure for Aquarion residential
21 single-family customers designed to encourage
22 conservation by sending appropriate pricing
23 signals to higher volume users and tied recovery
24 of executive compensation to the achievement of
25 key affordability metrics.

1 Ultimately, today's decision protects
2 the public interests by preventing customers from
3 having to pay for costs that Aquarion did not
4 sufficiently justify. As such, staff recommends
5 approval.

6 THE CHAIRMAN: Thank you, Mr. Vocolina.
7 Is there a motion?

8 COMM. CARON: Madam Chairman, I move
9 adoption of Item Number 1.

10 THE CHAIRMAN: Thank you. And I will
11 second. And we will take any comments at this
12 time before calling for a roll call vote.

13 And Commissioner Caron.

14 COMM. CARON: Thank you, Madam
15 Chairman. Madam Chairman, I want to thank our
16 Authority staff for all their hard work on this
17 rate case and the other rate case they're working
18 on concurrently. Also, thanks to all the parties
19 for their focus and participation during this
20 docket.

21 I also want to point out that our Chair
22 is one of the most hard-working people I've ever
23 witnessed. She's lead on every docket at PURA,
24 including both this water rate case and the
25 electric one we have before us as well. She runs

1 the entire operation here at PURA, including
2 managing all of the staff. I note she has
3 directed this docket from the beginning and
4 through to the end. That is no small feat to
5 manage an entire rate case, let alone two, and all
6 the other responsibilities she's taken on here at
7 PURA. Madam Chairman, congratulations on seeing
8 this docket through.

9 Having said that, this isn't a decision
10 I would have come to had I been the lead on it,
11 but it is the decision we have. Some of the
12 accounting errors or lack of justifications by the
13 company in this case have really set the stage for
14 what is before us today and a lack of testimony
15 for proving necessity. Errors on the pro forma
16 which double count as significant plant in service
17 is hard to ignore. It then flows through the rest
18 of the calculations and reduces recovered
19 investments, impossible to not address other than
20 the way it is. The excess accumulated deferred
21 income taxes that the company insisted -- or the
22 treatments that the company insisted on in terms
23 of providing to the ratepayers has also had the
24 effect of reducing the rate base and the revenue
25 requirement.

1 I recognize that some of the cutoff
2 dates the company highlighted for acceptance into
3 the record seem arbitrary and capricious. It does
4 feel as if a number of the traditional expected
5 rules of process have changed here in the docket.
6 I can certainly see that the company is taken by
7 surprise and could very well feel that the
8 decision in places and determinations were
9 arbitrary and capricious.

10 When I first began at the Authority,
11 Connecticut had some of the lowest ROEs in the
12 nation. Knowing that many companies that are
13 located in Connecticut or who may consider
14 locating in Connecticut would see that as an
15 economic indicator, I worked with my colleagues
16 over the years to try and provide stable and
17 appropriate ROEs that have been consistently
18 steady between about 9.16 and 9.63, which is what
19 Aquarion's current ROE is, which is also the
20 highest in Connecticut. Those ROEs, while not
21 being exceptionally high, were also not
22 exceptionally low. I have felt for many years now
23 that it indicated Connecticut was a good place to
24 do business. They also were indicators --
25 indications to investment analysts that follow

1 Connecticut companies that these were good
2 companies to invest in. I don't think that will
3 be true going forward after adoption of this
4 decision.

5 The ROE in this decision was appalling
6 to me personally with a 93 percent basis point
7 reduction. Even the OCC provided for a higher
8 ROE. I was impressed by OCC's brief. There was
9 much in it that I found I could support, including
10 their analysis and proposal for an ROE in the 9
11 percent range.

12 This decision's ROE seems to be sending
13 a message. I'm not sure what that message is, but
14 it comes across as something like a punishment.
15 ROEs are as much an art as well as a science.
16 Connecticut has enough trouble rising from the
17 bottom ranks of economic indicators that other
18 companies use to assess for an economic
19 environment to run a successful company in this
20 state, and I don't think this will help,
21 especially in a rising cost-of-capital
22 environment.

23 This decision I am convinced will
24 discourage further ongoing investment by the
25 company in the future. On one hand, in other

1 dockets, not water, we have been encouraging the
2 utility sector to be more aggressive in hurtling
3 toward a net-zero environment. One needs
4 investment to do that. On the other hand, this
5 decision will have far-reaching effects into the
6 future for utilities, not just in the water
7 sector. In my humble opinion, it will encourage
8 more risk-averse planning and very cautious
9 execution in other areas of management.

10 And while utilities can't up and move
11 out of the state, in a multijurisdictional company
12 they can pick and choose where and what state to
13 invest their limited capital. I suspect
14 investment will fall significantly in Connecticut
15 for the foreseeable future and increase in other
16 state jurisdictions, and not just from Aquarion.

17 I have little doubt that they will work
18 to provide professional and prudent efforts going
19 forward to fulfill their statutory obligations for
20 a safe and reliable water system.

21 This decision, I feel, may have an
22 effect on other water systems, the gas system and
23 the electric utilities as well.

24 I don't think it's a stretch to imagine
25 that Aquarion will be back before us with another

1 application for adjustment to its rates within two
2 years, if not sooner. I hope when that time
3 comes, they will sharpen their pencils and
4 justifications for their capital investments.

5 Water customers pay some of the lowest
6 rates for the most important commodity, the one we
7 ingest and cannot live without. Water utilities
8 are also the most capital intensive of the utility
9 sector. Connecticut has the highest-rated water
10 in the country. In a word, it's a bargain.

11 However, today is the day that belongs
12 to the ratepayer. This decision will provide a
13 significant reduction in rates for Aquarion
14 customers. While rate decreases do happen, it is
15 certainly infrequently. For those reasons, this
16 is a decision that is very hard to vote against,
17 and I cannot in good conscience, despite my
18 reservations, allow this decision to fail today
19 that would have the effect of implementing the
20 company's application, as presented, and force a
21 \$27 million rate increase on the Aquarion system
22 this year and around 20 million over the next two
23 years.

24 I am certain that a near \$40 million
25 rate increase would not be in the best interest of

1 ratepayers, which is what would likely happen if
2 this decision does not pass today. So I do plan
3 to vote for this decision and hope that we see a
4 better application by the company in the future.
5 And that concludes my comments.

6 THE CHAIRMAN: Thank you. Mr. Vice
7 Chairman.

8 THE VICE CHAIRMAN: Thank you, Madam
9 Chairman. Madam Chairman, I've been in the water
10 sector, working in the water sector for quite some
11 time. I've never in my career seen a decision
12 that excluded more items than this. Water is a
13 basic necessity, essential to the needs of our
14 citizens in their everyday life, health and
15 existence for food, hygiene and sanitation, for
16 our precious environment and wildlife, for safety
17 of our citizens, protections against disasters,
18 including fire, as well as economic development.

19 Aquarion stated in their exceptions
20 that if you wanted to put a chill on investment,
21 this is how to do it. I don't think it was a
22 stretch for the company during orals to say that
23 this decision in places was arbitrary and
24 capricious. The disallowance of items requested
25 by the Authority in Late-Files and presented in

1 the agreed-upon time I think illustrates this
2 perfectly. Recognizing that there certainly were
3 issues with excess ADIT in some of the
4 plant-in-service items for the company which
5 carried through to other calculations; however,
6 this will tell investors to spend their money
7 elsewhere, not in Connecticut.

8 As I respond to the proposed
9 decision -- I've gone through many over the
10 years -- even the tone of the writing seemed to me
11 to be contemptuous and perhaps even condescending.
12 I have no doubt that this will be appealed to the
13 superior court. I think the company has
14 legitimately pointed out that there are items in
15 this decision that are trying to make an example
16 of this company.

17 The ROE is another solid example. The
18 ROE calculations are not an exact science, and we
19 all know that, as we hear in our rate cases at
20 PURA over many years, but an over 80 basis point
21 reduction, which is substantially lower than the
22 OCC's, and I think it should be higher as interest
23 rates are projected to continue their increase.
24 And by reducing the ROE below usual standards is a
25 massive signal to discourage vital investment in

1 water infrastructure and protection for public
2 health, environment and safety. As recently as
3 yesterday, the Federal EPA came out with more
4 standards to protect our water supply, which is
5 going to cost the water companies more to
6 implement.

7 Courts, of course, often defer to
8 agencies' expertise, but some of the exceptions
9 pointed out that there were new rules being
10 applied to Aquarion in this docket that were not
11 applied to the others, specifically the recent
12 Connecticut Water case.

13 While I'm happy for the relief
14 ratepayers will receive from reduced rates, I
15 worry that the chill on future investment may
16 occur. I also think that a risk-averse company
17 will be unwilling to invest in any public water
18 systems down the road, and that means any
19 Connecticut utility who looks through this
20 decision.

21 And I have to say that over the years
22 Aquarion has done an outstanding job. When we
23 actually went to them, us and the Department of
24 Public Health, to take a system in southwest
25 Connecticut that could no longer get potable water

1 to the people that they serve, and they stepped up
2 to the plate.

3 At a time when Connecticut has very
4 successfully encouraged business growth and job
5 creation in our state, this decision represents a
6 punitive and anti-business practice message from
7 the state. So I find that unfortunately I cannot
8 support this decision. I do want to thank all the
9 parties and intervenors who put much effort into
10 this docket. And I also continue to have the
11 utmost respect for our hard-working, wonderful and
12 dedicated staff at PURA, but today I will be
13 voting no. Thank you.

14 THE CHAIRMAN: Thank you, Mr. Vice
15 Chairman. So I will offer some brief remarks
16 myself and then we will call for a vote.

17 So I want to begin with expressing my
18 sincere gratitude for the contributions of the
19 parties and intervenors in this proceeding, I
20 think OCC, EOE, Smart Water Westport, others who
21 put forward an intense level of effort and
22 scrutiny through the course of this docket. And I
23 think the broader perspectives that come into
24 decisions and dockets ultimately result in more
25 balanced decisions.

1 And I also want to applaud the
2 technical staff of the Authority and our lawyers
3 who collectively, I think, have exceeded certainly
4 my expectations for the ability to manage this job
5 as well as the other rate case that is ongoing.

6 And I think we've heard a little bit
7 about potential messages and message sending this
8 morning. I wouldn't couch it that way. But to
9 the extent that we want to suggest today's
10 decision does send messages, I'd say that the
11 first message is that broader perspectives result
12 in more balanced decisions. I think at its core
13 what this decision does is illustrate that the
14 Authority is prepared to do its job based on the
15 facts that are put before us in a specific rate
16 case.

17 Frankly, I think the references,
18 especially by the company during written
19 exceptions and oral arguments, that there's a
20 suggestion that there will be a chill on future
21 investment is entirely misleading, given that the
22 company has received authorization to fold into
23 its rates over \$600 million of investments. No
24 where in this decision does the Authority find any
25 of its investments imprudent. Rather, we have

1 said that they failed to substantiate their
2 evidentiary burden for investments that they
3 sought after a certain date. So the prospect of
4 putting a chill on future investment I think is
5 entirely misleading.

6 If we want to talk about messages, what
7 I think this decision should say is that it should
8 be abundantly clear to the regulated entities in
9 the state that the agency is, you know, prepared
10 to exercise what I think our responsibility is
11 which is to provide adequate oversight and to rule
12 on the facts that are put in front of us in a
13 specific docket. And given what we saw in this
14 proceeding, I think that message bears repeating.

15 And from my perspective, and I've been
16 saying this during my whole tenure here, including
17 in my dissent on the Connecticut Water rate case,
18 I want to be abundantly clear this is not my
19 opinion. This is the statute. The burden of
20 demonstrating that a proposed rate is just and
21 reasonable is squarely on the shoulders of the
22 utility. It's not PURA's job. It's not our
23 stakeholders' job. And it's most importantly not
24 the ratepayers' job to carry that burden. The
25 executives of these utilities are well compensated

1 to provide safe and reliable service.

2 And instead what I saw through written
3 exceptions and oral arguments in this docket was,
4 instead of acknowledging the failure to meet those
5 evidentiary burdens, which are defined by law, the
6 company instead put forward several disjointed and
7 frankly outlandish claims ranging from equating
8 this decision to a precursor of what happened in
9 Flint, Michigan despite that being an entirely
10 apples-to-oranges situation of a municipality
11 rather than a regulated utility.

12 There were claims that this decision is
13 politically motivated. There were claims that
14 PURA has ignored the evidence in the record. And
15 we've already discussed the claims that I think
16 are frivolous regarding the investment and the
17 chill on that. But if you put aside the rhetoric,
18 ultimately what I hear is a continued attempt to
19 shift the burden, and that is a burden that the
20 legislature has put squarely on those utilities.
21 There's a reason that no other party or intervenor
22 in this proceeding suggested that Aquarion met
23 their burden. Ultimately, I want to stress that
24 it is the company's obligation, one that they
25 accepted as a condition of their franchise from

1 the state, to provide safe and reliable service.

2 So in conclusion, I'm disheartened by
3 the company's position in this case, but I'm not
4 discouraged. I think PURA and our stakeholders
5 did the job based on the facts that were put
6 before us. So if there is a message coming out of
7 today, I think it's simply that PURA is prepared
8 to hold our regulated utilities accountable, and I
9 think that's what this decision does. So with
10 that, I will be supporting today's decision. And
11 I would ask Mr. Bumpen to call the vote, please.

12 MR. BUMPEN: Chairman Gillett.

13 THE CHAIRMAN: Yes.

14 MR. BUMPEN: Vice Chairman Betkoski.

15 THE VICE CHAIRMAN: No.

16 MR. BUMPEN: Commissioner Caron.

17 COMM. CARON: Yes.

18 THE CHAIRMAN: Thank you. The decision
19 passes. The decision is adopted.

20 We will move to Section B of the agenda
21 which is our consent calendar. I'll be seeking a
22 motion to adopt the consent calendar, please.

23 COMM. CARON: Chairman, I move today's
24 consent calendar, Items 1 through 8.

25 THE VICE CHAIRMAN: Second.

1 THE CHAIRMAN: Thank you. The consent
2 calendar has been moved and seconded.

3 Mr. Bumpen, please take the roll.

4 MR. BUMPEN: Chairman Gillett.

5 THE CHAIRMAN: Yes.

6 MR. BUMPEN: Vice Chairman Betkoski.

7 THE VICE CHAIRMAN: Yes.

8 MR. BUMPEN: Commissioner Caron.

9 COMM. CARON: Yes.

10 THE CHAIRMAN: Thank you. The consent
11 calendar has been adopted in full.

12 Next, we are going to turn to the
13 consideration of the following proposed settlement
14 in executive session. There is a resolution and
15 decision of the Public Utilities Regulatory
16 Authority accepting the stipulation agreement
17 terms and authorizing its Chairman or attorney to
18 sign the stipulation agreement on behalf of
19 members of the Authority. This settlement is
20 intended to resolve all matters set for a hearing
21 in the Federal Energy Regulatory Commission Docket
22 ER18-1639-015, which relates to Mystic's September
23 15, 2021 informational filing.

24 At this time, I will seek a motion for
25 the Authority to go into executive session.

1 THE VICE CHAIRMAN: So moved, Madam
2 Chairman.

3 COMM. CARON: Second.

4 THE CHAIRMAN: Thank you. Mr. Bumpen,
5 please take the roll.

6 MR. BUMPEN: Chairman Gillett.

7 THE CHAIRMAN: Yes.

8 MR. BUMPEN: Vice Chairman Betkoski.

9 THE VICE CHAIRMAN: Yes.

10 MR. BUMPEN: Commissioner Caron.

11 COMM. CARON: Yes.

12 THE CHAIRMAN: Thank you. At this
13 time, we will be moving all attendees of the
14 regular meeting to the waiting room where you are
15 free to go about your day. The commissioners are
16 going to move into executive session, which is
17 closed for deliberation of the proposed
18 settlement. The vote with respect to the
19 settlement will be taken on the public record. So
20 if you would like to hear the outcome of that
21 vote, then you can wait in the waiting room and we
22 will let you back in when the deliberations have
23 concluded. Otherwise, we wish you a good rest of
24 the day and we'll see you next time. So please
25 bear with us as we go through the administrative

1 step of putting folks into the waiting room now.

2 (Whereupon, an executive session was
3 held.)

4 THE CHAIRMAN: Okay. Thank you for
5 bearing with us. We are back on the record. The
6 recording has resumed with respect to our regular
7 meeting held today, Wednesday, March 15, 2023. We
8 have returned from executive session. And now I
9 will call for a motion with respect to the item on
10 the executive session portion of the agenda,
11 please.

12 THE VICE CHAIRMAN: I move adoption,
13 Madam Chairman.

14 COMM. CARON: And second.

15 THE CHAIRMAN: Thank you, gentlemen.
16 The resolution, the decision of the Authority has
17 been moved and seconded.

18 Mr. Bumpen, please take the roll.

19 MR. BUMPEN: Chairman Gillett.

20 THE CHAIRMAN: Yes.

21 MR. BUMPEN: Vice Chairman Betkoski.

22 THE VICE CHAIRMAN: Yes.

23 MR. BUMPEN: Commissioner Caron.

24 COMM. CARON: Yes.

25 THE CHAIRMAN: Thank you. The item has

1 been adopted.

2 With that, we have reached the end of
3 today's regular meeting agenda. We will adjourn.
4 Our next regular meeting is scheduled for next
5 Wednesday, March 22nd, at 10 a.m. by remote
6 teleconference, and we will see you then. Thank
7 you and have a great rest of the day.

8 (Meeting concluded 10:18 a.m.)
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1 CERTIFICATE FOR REMOTE HEARING

2
3 I hereby certify that the foregoing 26 pages
4 are a complete and accurate computer-aided
5 transcription of the audio file of the remote
6 regular meeting before the Public Utilities
7 Regulatory Authority, which was held before
8 MARISSA P. GILLETT, CHAIRMAN; JOHN W. BETKOSKI,
9 III, VICE CHAIRMAN; and MICHAEL A. CARON,
10 COMMISSIONER, on March 15, 2023.
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15 

16 -----
17 Lisa L. Warner, CSR 061
18 Court Reporter
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Tab B

22-07-01 - Application of Aquarion Water Company of Connecticut to Amend Its Rate Schedule

March 15, 2023

**Dissent by: John W. Betkoski, III
Vice Chairman**

I've been in the water sector a long time. I've never seen a decision that excluded more items than this. Water is a basic necessity- essential to the needs of our citizens in their everyday health and existence for food, hygiene, and sanitation; for our precious environment & wildlife; for the safety of our citizens in protection against disasters, including fire and economic development.

Aquarion stated in their exceptions that, if you wanted to put a chill on investment this is how to do it.

I don't think it was a stretch for the company during orals to say that this decision in places was arbitrary and capricious. The disallowance of items requested by the authority in late files and presented at an agreed upon time I think illustrates this perfectly.

Recognizing that there certainly were issues with excess ADIT and some of the plant in service items from the company which carried through to other calculations. However, this will tell investors to spend their money elsewhere. Not in Connecticut.

As I was going through the proposed decision even the tone of the writing seemed to me to be contemptuous and perhaps condescending.

I have no doubt this decision will be appealed to the superior court. I think the company has legitimately pointed out that there are items in this decision that are trying to make an example of this company.

The ROE is another example. ROE calculations are not an exact science as we hear in all our rate cases, but an over 80 basis point reduction is substantially lower than the OCC's and I think it should be higher as interest rates are projected to continue their increase. By reducing the ROE below usual standards- a massive signal to discourage vital investment in water infrastructure and protection for public health, environment, and safety.

Courts of course often defer to agency expertise but some of the exceptions pointed out that there were new rules being applied to Aquarion in this docket that were not applied to others. Specifically, the recent CT Water Case.

While I'm happy for the relief ratepayers will receive in reduced rates, I worry that the chill on future investment may occur.

I also think that a risk averse company will be very unwilling to invest in any troubled water systems down the road, and that means any CT utility who looks through this decision.

At a time when Connecticut is very successfully encouraging business growth & job creation in our state this decision represents a punitive & anti-business practice message from the state government.

So, I find that I cannot support today's decision. I do want to thank all the parties and intervenors who put so much effort into this docket and I also continue to have the utmost respect for our hardworking PURA staff. But today I disagree and will be voting no.

Tab C

Marissa Gillett Transcript 3-19-2023

PURA Chairman Marissa Gillett discusses the importance of rate cases like the one Aquarion just went through and why PURA won't be able to get a look inside Eversource's books until 2025.

Mike Hydeck: Nothing gets your attention like a rate hike and when our electric companies were able to get their supply charges on our bills to double, lawmakers and regulators say this was a pass through because of the price of natural gas on the world market and the war in Ukraine, as well and the restriction of supply because of that. Then, just weeks later, executives from Eversource touted huge gains in their profits to shareholders. So can both be true? The Chairman of the Public Utilities Regulatory Authority, or PURA, joins me now to shed some light on this, as well as where water rates could be going. Chairman Marissa Gillett, welcome back to Face the Facts. Nice to see you.

Marissa Gillett: Nice to see you. Thanks for having me.

Mike Hydeck: So how does Eversource report surging profits and then tell us times are tight and we need more money from ratepayers?

Marissa Gillett: Now, I think that's the question of the hour. And it's certainly something both myself and the legislature have been focused on this session. You know, they are regulated entities and in exchange for their monopoly, they are entitled to receive an opportunity to earn a fair return. But I don't think anyone looking around thinks that what they are reporting constitutes a fair return. So that's definitely something that I've been anxious to address, and, frankly, really eager to have the opportunity to review their rates. Unfortunately, I've not had that chance in the four years that I've been in this position.

Mike Hydeck: So speaking of which, to that point, when a utility company wants a rate hike, usually something called a rate case happens. Basically, they make their case to you, PURA. You see their financials. UI and Eversource give you their paperwork, public hearings happen, it gets discussed, but Eversource hasn't had one of these in years, correct? And why is that?

Marissa Gillett: Correct. So by law, all the entities that we regulate are supposed to come in every four years, if they're an electric or gas utility. The

last time that Eversource came in for a rate case was in 2016. Now in 2020 and 2021, there was a proceeding where PURA tried to do an interim rate decrease using some of the authority we got in the Take Back Our Grid Act that actually ended in a settlement that did see some monies returned to customers through that. Unfortunately, though, there was also a provision in there that excused Eversource from coming in for a rate case until 2025. And at the time, that sounded really great. I know a lot of people were thrilled that that mean distribution rates would be held. I actually dissented at the time saying, you know, I think it's a mistake to let Eversource go that long, without really getting under the hood and seeing what makes up these rates. And right now, I think that's what we're seeing. I need them to come in for a rate case in order to exercise all these tools. And you know, you mentioned water rates just a moment ago, I think what you saw coming out of PURA just this last week, where we exercised a lot of those tools in the context of a water rate proceeding. That was really my attempt to show as the chief regulator in the state, what I could do if I was given the opportunity to go through a rate case with a lot of these utilities.

Mike Hydeck: So why were you able to do it with this, doesn't Eversource own Aquarion right, so why did they consent? Or how did a rate case come about in the water rates particular situation and it can't come about in the electric rates? How are you able to manifest it with Aquarion?

Marissa Gillett: It's a great question. So, you know, it's really up to the utilities when they come in for rate cases. There is some state laws I mentioned just a moment ago for electric and gas utilities, trying to get them to come in every four years. And that's one of the things that the legislature is looking at this session through SB 7 is trying to get these utilities to come in on a more regular cycle. So right now, the reason I was able to exercise that authority Aquarion was that they themselves actually came in last August asking for a significant increase in their rates. And at the same time United Illuminating, which is, you know, another one of our big electric utilities in the state made the same ask. So UI is also pending before me right now. So right now, we're really beholden to Eversource in terms of when they're going to come in for a rate case. And they just reported to investors that they're not looking to come in until 2025. And if they're listening right now, and they hope they are, I would really encourage them to come in sooner, because I think we all would benefit from looking under the hood and really understanding the drivers of the rates that they're offering in Connecticut.

Mike Hydeck: Can legislation change that? The SB 7 you mentioned, will that be in there and say look, you need to come in every four years, no matter what the market says. Is that possible?

Marissa Gillett: It is. What we can't do is disturb a settlement. So in this case, you know, the 2021 settlement, which allows Eversource to stay out through 2025, we can't go back and unwind that. But we can correct this issue moving forward. And for anyone out there interested in the legislative process, I'd really encourage you to reach out to your legislator and express confidence and urge them to adopt SB 7 because SB 7 has some provisions in it that would prevent us from being in the situation that we're in now moving forward.

Mike Hydeck: SB 7 stands for Senate Bill 7. Okay, one last question I have about a minute. We had Representative Jonathan Steinberg in from Westport. He's on the Energy Committee, as you probably know. He wants to help make utility bills more transparent. When I look and I see supply charges, I want to know what that money is going for when there's extra fees. Where are we with that? Is that going to become a reality, do you say?

Marissa Gillett: It is. Actually last July, July of 2022, PURA completed our docket, which is a word for how we categorize our work at PURA. We completed that docket last summer and issued a final decision. That decision directs both Eversource and UI to redesign their electric bills, so that you can understand what the cost drivers are of each line item on the bill. And more importantly, you can understand who has direct control over them, so you can go interact with those folks and express your opinions on them. So the utilities told us it would take them about a year to implement those changes. So we should see some changes coming this summer.

Mike Hydeck: We'd love to see that. PURA Chairman, Marissa Gillett. thanks so much for joining us and the explanations today on Face the Facts. We appreciate your time.

RETURN DATE: April 11, 2023

AQUARION WATER COMPANY OF
CONNECTICUT

Plaintiff-Appellant

V.

PUBLIC UTILITIES REGULATORY
AUTHORITY

Defendant-Appellee

SUPERIOR COURT

JUDICIAL DISTRICT
OF NEW BRITAIN

MARCH 30, 2023

**Tab D to Aquarion's Ex Parte Request For Stay Of Enforcement Of Agency
Decision and Accompanying Memorandum of Law**

AFFIDAVIT OF DOUGLAS P. HORTON

The undersigned, Douglas P. Horton, being of lawful age and duly sworn according to law,
deposes and states to the best of my knowledge and belief as follows:

1. I am over the age of 18 years and I understand the obligations of an oath.
2. I am employed by Eversource Energy Service Company as the Vice President of Distribution Rates & Regulatory Requirements. Aquarion Water Company of Connecticut ("Aquarion" or the "Company") is a corporate affiliate of Eversource Energy ("Eversource"). In my capacity as the Vice President of Distribution Rates & Regulatory Requirements, I support regulatory dockets involving Aquarion and other corporate affiliates of Eversource, including dockets before the Connecticut Public Utilities Regulatory Authority ("PURA"). PURA is an administrative agency in the executive branch of Connecticut government that regulates investor-owned electric, natural gas and water utility companies.
3. I make this statement based on my personal knowledge and upon my review of the business records of Eversource and Aquarion and their regulatory filings before PURA.

4. I submit this Affidavit in support of Aquarion's *Ex Parte* Request For Stay Of Enforcement Of Agency Decision and an accompanying Memorandum of Law ("Motion for Stay"), which seeks to stay PURA's March 15, 2023 decision in Docket Number 22-07-01, Application Of Aquarion Water Company Of Connecticut To Amend Its Rate Schedule (the "Decision").

5. In deciding whether to issue a stay, courts are charged with balancing the equities by considering the following factors: "(1) the likelihood that the [applicant] will prevail; (2) the irreparability of the injury to be suffered from immediate implementation of the agency order [under review]; (3) the effect of a stay upon other parties to the proceeding; and (4) the public interest involved." Griffin Hospital v. Commission on Hospitals & Health Care, 196 Conn. 451, 456 (1985).

6. This Affidavit demonstrates that the Decision is having, and will continue to have, an immediate and substantially negative impact on the financial condition of Aquarion and particularly on its ability to attract and retain both debt and equity investment in its water infrastructure operations in Connecticut at competitive rates. Unless Aquarion's motion to stay the Decision is granted, Aquarion will suffer irreparable financial harm. The ramifications of this Decision, if it stands, are far reaching on its impact to the Company and how it is structured to serve its customers. The ramifications of the Decision, including the direct impacts of the \$2 million reduction in revenues as compared to current rates, which are already deficient to fund the Company's ongoing operations, will require the Company to evaluate all aspects of its business, including the level and prioritization of its capital investments. Unless the Motion for Stay is granted, the irreparable harm will continue for at least one year either through resolution

of this appeal or the filing of a new base rate case that will take several months to prepare and 200 days for PURA to adjudicate.

7. PURA Docket Number 22-07-01 was the first base-rate case application in nearly ten years that Aquarion filed with PURA under General Statute § 16-19 to seek permission to change the base rates it charges to provide safe, reliable and clean water service to customers. Because Aquarion's rates for water service are regulated by the State of Connecticut, it cannot adjust those rates without approval from PURA.

8. Nearly ten years have passed since Aquarion's last rate case (in 2013) – and even though during the last decade inflation, new and more stringent regulations and myriad other economic pressures have substantially increased the cost of prudently operating a water utility company – astoundingly, the Decision *reduced* Aquarion's existing rates by \$1,969,517.

9. As a result of the Decision's punitive and unjustified reduction to Aquarion's existing base rates, the following factors demonstrate that — contrary to the statement of the PURA Chair that the Decision would have no impact on the Company's ability to attract capital investment (see Motion for Stay, Tab A at 19) — the Company's financial condition will deteriorate immediately and Aquarion will suffer irreparable harm unless the Decision is stayed pending the outcome of Aquarion's administrative appeal of the Decision.

- a. In order for Aquarion to be able to continue to make infrastructure investments that are necessary to deliver safe, clean and reliable water to consumers, it must be able to successfully attract capital from both debt and equity investors. General Statute § 16-19e(a)(4) acknowledges this reality because it requires that water rates approved by PURA must be “sufficient . . . to allow public

service companies [such as Aquarion] . . . to attract needed capital and to maintain their financial integrity . . .”

- b. Because Aquarion has not had a rate case in nearly ten years – coupled with the increasing cost pressures, the need to comply with more stringent water quality standards and inflationary pressures – Aquarion’s actual earned return on equity (“ROE”) is 7.04% as of December 31, 2022, as reported to PURA on March 1, 2023. In this context, ROE is the actual return that is realized by equity investors in the Company.
- c. The Decision’s unwarranted and punitive reduction of \$2 million from the revenues Aquarion collects in base rates will further reduce Aquarion’s current earned ROE of 7.04%, all else constant, to an ROE of 6.79%. (See Ex. A hereto, Affidavit of Debra Szabo of Aquarion.) By way of comparison, this earned ROE for equity investors is well below the current Prime Rate¹ charged by banks of 8.00%.
- d. The Decision’s unwarranted and punitive outcome has therefore jeopardized Aquarion’s ability to continue to be able to attract and retain sufficient investment from both debt and equity investors at competitive rates. That conclusion is supported by the comments of a reputable third party equity analyst provided in Exhibit B hereto. Exhibit B hereto contains a report dated March 17, 2023 from Bank of America Securities (“BoA”), which was issued

¹ The prime rate or prime lending rate is an interest rate charged by banks to creditworthy customers.

two days after the Decision. BoA's report in Exhibit B hereto commented on the results of the Decision as follows:

[PURA] Commissioner Caron stated that the . . . ROE he voted to approve was "appalling" and below his 9.16-9.63% preferred range. Caron implied that the rate case outcome would send a signal to investment analysts that the utilities are not 'good ones to invest in'. The Vice Chair described the order "as telling investors to spend their money elsewhere, and not in Connecticut". The Vice Chair [of PURA] believes that the Order was "contemptuous and perhaps even condescending", overall "trying to make an example of this company".

BOA also concluded that, "This decision was worse than expected and falls below expectations of investors we have spoken to." (Ex. B hereto at 1.)

BOA explained that, "Our investor conversations have revealed a growing unease with Eversource's outlook with the challenges in Connecticut"

(Id. at 2.) BOA further concluded that "[t]he PURA decision, in our view is negative for shares of ES² in terms of financial impact as well as the cautious language used by PURA." (Id. at 4.)

- e. Additionally, Exhibit C hereto contains a March 17, 2023 report from Moody's Investor Service ("Moody's"), which was issued two days after the Decision, notes the Decision's impact on Aquarion's credit standing. Moody's is a rating agency that issues credit ratings for Aquarion that are relied upon by lenders and equity investors to evaluate Aquarion's financial condition. Moody's concluded that PURA's "final order is credit negative for Aquarion because it will reduce its cash flow and weaken its credit

² "ES" means Aquarion's parent, Eversource Energy.

metrics”. (Ex. C hereto at 1.) A lower credit rating for Aquarion means that lenders will charge Aquarion more (in the form of higher interest rates) to borrow money, which not only harms Aquarion but also its customers. Moody’s also concluded that “[w]e expect Aquarion to appeal the rate order” and PURA’s “decision was not unanimous, and subsequent comments by the dissenting commissioner strongly suggest opposing views and a level of contentiousness among the three [PURA] regulators.” (Id. at 1-2.)

- f. Exhibit D hereto contains a March 21, 2023 report from Regulatory Research Associates (“RRA”), which is a group within S&P Global Commodity Insights. RRA evaluates the reasonableness of the utility regulatory environment in all fifty United States to help educate equity investors and lenders. RRA issued this report six days after the Decision. RRA concluded that the Decision’s ROE “is the lowest ROE authorized for a water utility since 2010 as tracked by Regulatory Research Associates, excluding a punitive 2020 decision. . . . this decision is considerably below the national average, which has been trending upward.” (Ex. D hereto at 1.) The report also concluded that “RRA has lowered its rating of the Connecticut regulatory environment for water utilities [by two notches], to Average 3/from Average/1 based on this final order. Investors will likely be more cautious of a regulatory climate that discourages capital investments and offers a lower return on those investments than other jurisdictions.” (Id.)

- g. Exhibit E hereto contains a report dated March 28, 2023 from Seaport Research Partners LLC, which analyzes the impact of the Decision on Aquarion. The report concludes that:

To us, the PURA backed into an 8.7% allowed ROE to solve for a rate decrease at Aquarion as PURA's Chair continues her regulatory and legislative campaign against ES. In a recent TV interview the PURA Chair described the outcome of the Aquarion rate case as her "attempt to show" "what (she) could do if given the opportunity to go through a rate case with a lot of these utilities". We expect Aquarion to appeal the rate case decision to the CT Superior Court, but in the meantime, we trimmed our ES estimates to reflect lower water earnings in CT.

(Ex. E hereto at 1.)

- h. Additionally, it is highly relevant and very significant that two of the three PURA Commissioners that voted on the Decision acknowledged that the Decision will have massive negative ramifications on Aquarion's investment in water infrastructure projects in Connecticut. Vice Chairman Betkoski concluded that:

ROE calculations are not an exact science as we hear in all our rate cases, but an over 80 basis point reduction [in Aquarion's current ROE] is substantially lower than the OCC's³ and I think it should be higher as interest rates are projected to continue their increase. By reducing the ROE below usual standards - a massive signal to discourage vital investment in water infrastructure and protection for public health, environment, and safety." (Motion for Stay, Tab B at 1.)

10. Based on all of the facts cited above, the Decision is having, and will continue to have, an immediate and substantially negative impact on the financial condition of Aquarion and particularly on its ability to attract and retain debt and equity investment in its water infrastructure

³ "OCC" means the Office of Consumer Counsel, which was a party in the docket that yielded the Decision. The OCC is the statutory advocate for Connecticut ratepayers.

operations in Connecticut on competitive terms. Further, unless Aquarion's motion to stay the Decision is granted, Aquarion will suffer irreparable harm.

11. The following table lists the exhibits submitted in support of this Affidavit.

Horton Aff. Exhibit #	Name of Document
A	Affidavit of Debra Szabo of Aquarion
B	March 17, 2023 Report from Bank of America Securities
C	March 17, 2023 report from Moody's Investor Service
D	March 21, 2023 Report from RRA REGULATORY FOCUS
E	March 28, 2023 Report from Seaport Research Partners LLC

[signature page follows]

D. Horton

NAME: Douglas P. Horton

STATE Massachusetts

COUNTY OF Middlesex

)
)
)

ss.:

SUBSCRIBED AND SWORN TO before me this 30th day of March, 2023

[Signature]
Notary Public

My Commission Expires: November 9, 2029



Exhibit A to Horton Affidavit

RETURN DATE: April 11, 2023	:	SUPERIOR COURT
	:	
AQUARION WATER COMPANY OF	:	
CONNECTICUT	:	
	:	
<i>Plaintiff-Appellant</i>	:	JUDICIAL DISTRICT
	:	OF NEW BRITAIN
V.	:	
	:	
PUBLIC UTILITIES REGULATORY	:	
AUTHORITY	:	
	:	
<i>Defendant-Appellee</i>	:	
	:	MARCH 30, 2023

AFFIDAVIT OF DEBRA A. SZABO

The undersigned, Debra A. Szabo, being of lawful age and duly sworn according to law, deposes and states to the best of my knowledge and belief as follows:

1. I am over the age of 18 years and understand the obligations of an oath.
2. My name is Debra A. Szabo. I am the Director of Rates and Regulation for Aquarion Water Company of Connecticut (“Aquarion” or the “Company”). My business address is 600 Lindley Street, Bridgeport, Connecticut. I am a Certified Public Accountant in the State of Connecticut.
3. I make this statement based on my personal knowledge and upon my review of the business records of Aquarion and its regulatory filings before the Connecticut Public Utilities Regulatory Authority (“PURA”).
4. My statements herein are connected with, and are in response to, a March 15, 2023 rate case decision issued by PURA in Docket Number 22-07-01, Application Of Aquarion Water Company Of Connecticut To Amend Its Rate Schedule (the “Decision”).

5. In deciding whether to issue a stay, courts are charged with balancing the equities by considering the following factors: “(1) the likelihood that the [applicant] will prevail; (2) the irreparability of the injury to be suffered from immediate implementation of the agency order [under review]; (3) the effect of a stay upon other parties to the proceeding; and (4) the public interest involved.” Griffin Hospital v. Commission on Hospitals & Health Care, 196 Conn. 451, 456 (1985).

6. This Affidavit demonstrates that the Decision is having, and will continue to have, an immediate and substantially negative impact on the financial condition of Aquarion. Unless Aquarion’s motion to stay the Decision is granted, Aquarion will suffer irreparable financial harm. The ramifications of this Decision, if it stands, are far reaching on its impact to the Company and how it is structured to serve its customers. The ramifications of the Decision, including the direct impacts of the \$2 million reduction in revenues as compared to current rates, which are already deficient to fund the Company’s ongoing operations, will require the Company to evaluate all aspects of its business, including the level and prioritization of its capital investments. Unless the Motion for Stay is granted, the irreparable harm will continue for at least one year either through resolution of this appeal or the filing of a new base rate case that will take several months to prepare and 200 days for PURA to adjudicate.

7. For the Company’s management and on-the-ground employees, the effect of the Decision will cause intangible and irreparable harm because the impact of the Decision is not isolated to immediate monetary impacts. Whether calculated as a \$2 million rate reduction as compared to existing rates, or an outcome that is \$15 million or more below what the Company needs to cover its existing costs, an environment where the Company’s earned return is declining to a level hundreds of basis points below a reasonable authorized return; where there is substantial

uncertainty for employees as to whether and when the inequities inherent in the decision will be addressed by the courts; where there is substantial uncertainty as to the way in which the Company may need to adjust to the impact of a significant, unexpected reduction in revenues and the otherwise exceedingly negative regulatory response, employees will bear the brunt. The Company's employees are specialized, technically proficient individuals not generally available in the marketplace. Yet, these employees have options and do not need to work in an environment of high uncertainty, flux and ultimately poor morale. As a result, the Company expects that the insidious impacts of this highly irregular regulatory decision will cause irreparable harm to its management and employees as they make decisions over the next year while the appeal is pending about their roles in the Company's business.

8. PURA Docket Number 22-07-01 was the first rate case application in nearly 10 years that Aquarion filed with PURA under General Statute § 16-19 to seek permission to change the base rates it charges to provide safe, clean and reliable water service to customers. Because Aquarion's rates for water service are regulated by the State of Connecticut, it cannot adjust those rates without approval from PURA.

9. Nearly ten years have passed since Aquarion's last rate case (in 2013) – and even though during the last decade inflation, new and more stringent regulations and myriad other economic pressures have substantially increased the cost of prudently operating a water utility company over the past ten years – astoundingly, the Decision *reduced* Aquarion's existing water rates by \$1,969,517.

10. Nearly ten years ago Aquarion served approximately 185,000 customer meter connections in 47 towns. In contrast, today it serves approximately 207,000 customer meter connections in 56 towns, which is nine additional towns and 22,000 more customer meter

connections than it served ten years ago. As a result of the Decision, Aquarion must now attempt to use *less* funds than it received previously in base rates to deliver safe and reliable water service to substantially more customers over a larger geographic area.

11. In order for Aquarion to be able to continue to make infrastructure investments that are necessary to deliver safe, clean and reliable water to consumers, it must be able to successfully attract capital from equity investors. General Statute § 16-19e(a)(4) acknowledges this reality because it requires that water rates approved by PURA must be “sufficient . . . to allow public service companies [such as Aquarion] . . . to attract needed capital and to maintain their financial integrity . . .”

12. Because Aquarion has not had a rate case in nearly ten years – coupled with the increasing cost pressures, the need to comply with more stringent water quality standards and inflationary pressures – Attachment A hereto shows that Aquarion’s actual earned return on equity (“ROE”) is 7.04% as of December 31, 2022, as reported to PURA on March 1, 2023. In this context, ROE is the actual return that is realized by equity investors in the Company.

13. Attachment B hereto shows that the Decision’s unwarranted and punitive reductions to the revenues Aquarion collects in base water rates will further reduce Aquarion’s current earned ROE of 7.04%, all else constant, to an ROE of 6.79%. By way of comparison, this earned ROE for equity investors is well below the current Prime Rate¹ charged by banks of 8.00%.

14. In the 2013 Rate Case, PURA authorized a total revenue requirement of \$177,284,978, which roughly equates to \$173,226,737 in the Final Decision. This comparison is derived starting with the total revenue requirement authorized in Docket No. 22-07-01 of

¹ The prime rate or prime lending rate is an interest rate used by banks, usually the interest rate at which banks lend to customers with good credit.

\$195,561,690, which is *inclusive* of incremental revenues associated with WICA infrastructure investments (\$17.2 million) and acquisition of 19 smaller water systems adding incremental base revenues (\$5.1 million).² These two revenue factors do not have the effect of offsetting the cost of higher operating and maintenance expenses for Aquarion's overall system, and neither provide support for the hundreds of millions of non-WICA capital investments that Aquarion has made over the last decade. When these two revenue factors are removed, PURA's reduction of \$2 million in base revenues in Docket No. 22-07-01 implies that the Company's overall cost structure is \$4 million lower than it was a decade ago, on a base-revenue basis (all else equal), due to the fact that conservation has occurred over the past 10 years eliminating half of the revenue disparity.

	Authorized at current rates	Conservation & other adjustments	Proforma revenue at current rates	Rate reduction	Authorized in Dkt 22-07-01
Base Revenue	\$ 177,284,978	\$ (2,088,724)	\$ 175,196,254	\$ (1,969,517)	\$ 173,226,737
WICA	\$ 17,208,457	-	\$ 17,208,457	-	\$ 17,208,457
Acquisitions	\$ 5,126,496	-	\$ 5,126,496	-	\$ 5,126,496
Total Revenue	\$ 199,619,931	\$ (2,088,724)	\$ 197,531,207	\$ (1,969,517)	\$ 195,561,690

15. PURA's Decision acknowledges that the Company completed capital additions subsequent to the end of the 2021 Test Year and before the close of the record in the proceeding on December 15, 2022. (Decision at 16-17). However in the Final Decision PURA disallowed \$48,060,300 of plant in service as of December 15, 2022, comprised of \$42,136,826 of capital additions completed between September 1, 2022 and December 15, 2022 and \$5,923,474 of capital additions completed *prior to August 31, 2022*. Attachment C hereto shows the financial impact associated with the exclusion of these capital additions is \$3,471,076 and \$487,954, respectively.

² The WICA surcharge is a statutory, cost-based surcharge designed to recover the incremental costs for a subset of Aquarion's capital investments devoted to replacement of aging and poor conditions water mains.

16. Finally, the Company identified numerous errors in the Decision, the associated financial impact of each error based on evidence contained in the record of this docket is identified in the table below.

The Aquarion Water Company of Connecticut

<u>Appeal</u> <u>Count No.</u>	<u>Count Description</u>	<u>Annual Impact on</u> <u>Aquarion Revenues</u> <u>(\$)</u>
2	Disallowance of \$42.1 Post Test Year Capital Additions (September 1, 2022 through December 15, 2022)	\$ 3,471,076
3	Disallowance of \$6M in Used and Useful Capital Additions (January 1, 2022 through August 31, 2022)	\$ 487,954
4	State and Federal Income Taxes	\$ 2,467,013
5	Improper Extension of Rate Base Components (Accumulated Depreciation	\$ 1,069,511
6	Improper Treatment of Rate Base Components (ADIT)	\$ 89,955
7	Disallowed 100% Variable Component of Employee Compensation	\$ 1,706,725
8	Disallowed 50% of Conservation Expense	\$ 249,675
9	Disallowed 65% of rate case expense	\$ 137,164
11	Inclusion of S/T debt in Capital Structure	\$ 2,189,607
Total		\$ 11,868,680

17. Based on all of the facts cited above, the Decision is having, and will continue to have, an immediate and substantially negative impact on the financial condition of Aquarion. Further, unless Aquarion's motion to stay the Decision is granted pending the outcome of the appeal of the Decision, Aquarion will suffer irreparable harm.

[signature page follows]

Debra A. Szabo

NAME: Debra A. Szabo

STATE Connecticut

COUNTY OF Fairfield

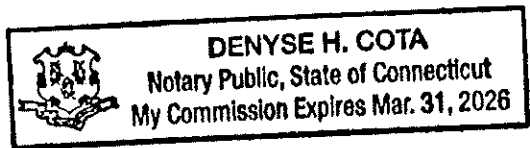
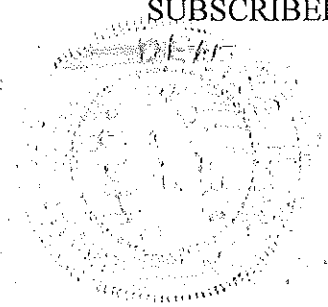
)
) ss.: Bridgeport
)

SUBSCRIBED AND SWORN TO before me this 30th day of March, 2023

Denyse H. Cota

Notary Public/Commissioner of the Superior Court

My Commission Expires: 3/31/2026



Szabo Affidavit – Attachment A

Aquarion Water Company of Connecticut
FINANCIAL SUMMARY - DOCKET 86-09-06RE01
Twelve Months Ending December 31, 2022

<u>Item Reference</u>		<u>Response</u>
B, 2,		
A.	Times pre-tax interest coverage (AFUDC included)	3.30 times
B.	Times pre-tax interest coverage and other non-cash accruals (AFUDC excluded)	0.93 times
C.	Indenture coverage	1.75 times *
	* average annual net earnings of AWCCT in the thirty-six consecutive months ending not more than ninety days prior to the date of issuance thereof shall have been at least equal to 1 3/4 times the aggregate amount of annual interest charges on all bond indebtedness on a pro forma basis. Such net earnings are before interest but after all income taxes.	
D.	Net cash flow as a % of total permanent capital	5.15%
E.	Net cash flow as a % of cash construction	37.75%
F.	Return on common equity	
	Cost of capital method (12 months ending)	
	1A) Average capital structure	7.06%
	1B) End of period capital structure	7.04%
	Net income method (12 months ending)	
	2A) Regulated portion of company	7.89%
	2B) Total company (same as 2a)	
G.	AFUDC as a % of earnings	11.78%
H.	Rate base	\$1,058,754,693
I.	Return on rate base	5.73%
	Items J thru L pertain to Aquarion Company, Parent Company of AWCCT Company	

J.* Market to book
1) Dollars, Market Book
2) Ratio

K.* Dividends per share
1) Most current 3 months ended
2) Most current 12 Months ended

*On January 7, 2000, Aquarion Company, parent company of Aquarion Water Company of Connecticut, formerly BHC, was purchased by Kelda Group PLC of Leeds, England. As a result of the merger, Aquarion Company common stock was purchased for cash. In April 2007, the Company was sold to Macquarie Utilities, Inc. On December 4, 2017, Eversource Energy Corporation (NYSE: ES) closed its purchase of Acquarion Company. Therefore, items J through L are no longer applicable for this reporting purpose.

L.* Earnings per share (see above)
1) Most current 3 months ended
2) Most current 12 months ended

M. Capital structure

1) Average

A) excluding short-term debt

	<u>Amount</u>	<u>%</u>	<u>Embedded Cost</u>	<u>Weighted cost of Capital</u>
Long-term debt	\$ 451,505,000	45.22	4.28%	1.94%
Preferred stock	-	0.00	0.00%	0.00%
Common equity	546,962,065	54.78	6.93%	3.79%
	<u>\$ 998,467,065</u>	<u>100.00</u>		<u>5.73%</u>

B) including short-term debt

	<u>Amount</u>	<u>%</u>	<u>Embedded Cost</u>	<u>Weighted cost of Capital</u>
Long-term debt	\$ 451,505,000	44.35	4.28%	1.90%
Preferred stock	-	0.00	0.00%	0.00%
Common equity	546,962,065	53.73	7.06%	3.79%
Short-term debt	19,477,374	1.91	1.98%	0.04%
	<u>\$ 1,017,944,439</u>	<u>100.00</u>		<u>5.73%</u>

2) End of period

A) excluding short-term debt

	<u>Amount</u>	<u>%</u>	<u>Embedded Cost</u>	<u>Weighted cost of Capital</u>
Long-term debt	\$ 486,505,000	45.90	4.28%	1.96%
Preferred stock	-	0.00	0.00%	0.00%
Common equity	573,414,555	54.10	6.96%	3.77%
	<u>\$ 1,059,919,555</u>	<u>100.00</u>		<u>5.73%</u>

B) including short-term debt

	<u>Amount</u>	<u>%</u>	<u>Embedded Cost</u>	<u>Weighted cost of Capital</u>
Long-term debt	\$ 486,505,000	45.37	4.28%	1.94%
Preferred stock	-	0.00	0.00%	0.00%
Common equity	573,414,555	53.47	7.04%	3.77%
Short-term debt	12,427,577	1.16	1.98%	0.02%
	<u>\$ 1,072,347,132</u>	<u>100.00</u>		<u>5.73%</u>

N. Inflation rate - % change from 12/21 to 12/22

Consumer Price Index	6.45%
Producer Price Index	6.85%

O. Interest rates @ 12/31/22

Average short-term rate	1.98%
Prime rate	7.50%

Szabo Affidavit – Attachment B

Aquarion Water Company of Connecticut
Docket No: 22-07-01

				12/31/2022	
				Actual¹	
<u>CAPITAL STRUCTURE</u>					
Line					
1	Equity			\$ 573,414,555	
2	Long Term Debt			486,505,000	
3	Short Term Debt			12,427,577	
4	Total			<u>\$ 1,072,347,132</u>	
5					
6	Equity %	Line 1 / Line 4		53.47%	
7	Long Term Debt %	Line 2 / Line 4		45.37%	
8	Short Term Debt %	Line 3 / Line 4		1.16%	
9	Total			<u>100.0%</u>	
10					
11	Cost of Long Term Debt			4.28%	
12	Weighted Cost of Long Term Debt	Line 7 x Line 11		1.94%	
13					
14	Cost of Short Term Debt			1.98%	
15	Weighted Cost of Short Term Debt	Line 8 x Line 14		0.02%	
16					
17	<u>Return on Rate Base</u>				
18				Actual	Proforma
19	Utility Operating Income			\$ 60,670,399	\$ 60,670,399
20	Revenue Reduciton (Final Decision, page 1)			-	(1,969,517)
21	Taxes on revenue adjustment ²	27.52%		-	541,962
22	Adjusted Utility Operating Income	Sum Line 19: Line 21		\$ 60,670,399	\$ 59,242,844
23					
24	Rate Base	Actual @ 12/31/22		\$ 1,058,754,693	\$ 1,058,754,693
25	RORB	Line 22 / Line 24		5.73%	5.60%
26					
27	Less: Weighted Cost of Long Term Debt	Line 12		-1.94%	-1.94%
28	Less: Weighted Cost of Short Term Debt	Line 15		-0.02%	-0.02%
29	Weighted Cost of Equity	Sum Line 25:Line 28		3.77%	3.63%
30	RETURN ON EQUITY	Line 29 / Line 6		<u>7.04%</u>	<u>6.79%</u>

¹ As filed on March 1, 2023 pursuant to Orders No. 2 issued in Docket No. 86-09-06 as stated in the Authority's final decision dated March 3, 1987.

² Effective tax rate based on 8.25% State tax rate and 21% Federal tax rate $[(State * (1-Federal)) + Federal]$

Szabo Affidavit – Attachment C

The Aquarion Water Company of Connecticut

<u>Line No.</u>	<u>Description</u>	<u>Amount</u> <u>(\$)</u>
1	Plant in service Adjustment of plant in service Sept. 1, 2022 - Dec. 15, 2022	\$ 42,136,826
2	Approved Weighted Average Cost of Capital	6.46%
3		<u>\$ 2,722,039</u>
4		
5	State Tax Rate	8.25%
6	State Taxes	<u>\$ 224,568</u>
7		
8	Federal Tax Rate	21%
9	Federal Taxes	<u>\$ 524,469</u>
10		
11	Revenue Impact	<u>\$ 3,471,076</u>

<u>Line No.</u>	<u>Description</u>	<u>Amount</u> <u>(\$)</u>
1	Plant in service Adjustment of plant in service as of August 31, 2022	\$ 5,923,474
2	Approved Weighted Average Cost of Capital	6.46%
3		<u>\$ 382,656</u>
4		
5	State Tax Rate	8.25%
6	State Taxes	<u>\$ 31,569</u>
7		
8	Federal Tax Rate	21%
9	Federal Taxes	<u>\$ 73,728</u>
10		
11	Revenue Impact	<u>\$ 487,954</u>

Exhibit B to Horton Affidavit

US Utilities & IPPs

Aquarion CT Rate Cut The Latest Cautious Regulatory Datapoint: Underperform on ES

Industry Overview

Connecticut water ruling sets a cautious stage

On March 15th Public Utilities Regulatory Authority of Connecticut voted 2-1 to implement a **rate cut** for Aquarion Water Company, Eversource's (ES) regulated water utility (Docket 22-07-01). Chair Gillett and Commissioner Caron voted in favor of the decision while Vice Chair Betkowski III dissented. The Chair's message was that it was prepared to provide adequate oversight and called Aquarion's characterization of a chilling effect on capital investment as "misleading" and "outlandish". Commissioner Caron stated that the 8.7% ROE he voted to approve was "appalling" and below his 9.16-9.63% preferred range. Caron implied that the rate case outcome would send a signal to investment analysts that the utilities are not 'good ones to invest in'. The Vice Chair described the order "as telling investors to spend their money elsewhere, and not in Connecticut". The Vice Chair believes that the Order was "contemptuous and perhaps even condescending", overall "trying to make an example of this company". PURA stated that the decision will lead to \$67 annual customer savings effective March 15, 2023, with a -11% reduction in Aquarion rates when combined with the Water Infrastructure Conservation Adjustment (WICA). We include more details on the original +\$37Mn rate increase proposal and details from the draft decision in the full report. *This decision was worse than expected and falls below expectations of investors we have spoken to.*

ES and AGR face long-term earnings risk

The challenging rate case outcome has negative impacts for Eversource's 2023 earnings and does indeed send a message about future returns. Our FY23 adjusted EPS assumed a ~\$0.03 contribution from the rate case; however, management did not include it as a key earnings driver in its 4Q22 presentation underpinning \$4.25-\$4.43 guidance.

We see clear negative readthroughs to Eversource's much larger electric distribution (9.25% ROE and 53% equity ratio) and natural gas utilities. CL&P has a track record of solid returns at ~9.1%, only minimal underearning. A lower reduced allowed equity ratio (50.35% in the Aquarion rate case) would have implications for the electric transmission rate base, even though the allowed ROE is set by FERC. Collectively a lower Connecticut cost of capital could represent an up to 3% EPS headwind for ES through 2025 (\$0.14), favorably assuming there is not incremental regulatory lag. This analysis is based on applying the 8.7%/51% to the distribution utilities and the 51% equity ratio to the electric transmission. The most exposure is at CL&P distribution where the recovery of legacy storm costs could lead to bill shock in the next rate case as well.

Avangrid (AGR) has a base rate increase request pending in Connecticut with a 2021 test year despite healthy returns. Avangrid discloses an 8.23% return on equity calculated using its 59% actual equity, above the 50% authorized. When utilizing the 50% actual equity, the implied earned ROE was notably higher than the 9.1% allowed and seemingly into the sharing band. We calculate a similar ~3% 2025E negative EPS exposure when applying the Aquarion cost of capital to AGR's CT utilities. *See full report for details.*

17 March 2023

Equity
United States
Utilities

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PURA: Public Utilities Regulatory Authority
CL&P: Connecticut Light & Power
WICA: Water Infrastructure Conservation Adjustment
FERC: Federal Energy Regulatory Commission
UIL: United Illuminating
O&M: Operating and maintenance
ES: Eversource

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Refer to important disclosures on page 7 to 9. Analyst Certification on page 6. 12530902

Timestamp: 17 March 2023 07:41AM EDT

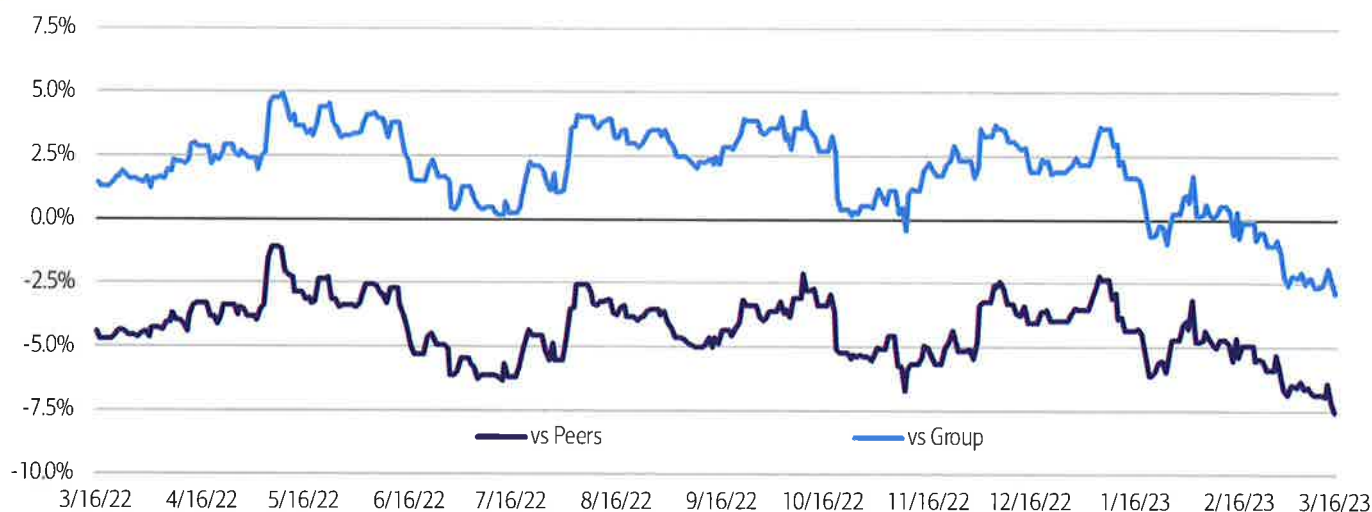
New England regulation is a hot topic

We recently engaged with our network of New England focused stakeholders which indicated that the relationship for Avangrid (AGR) and parties has frayed, with the latest Massachusetts datapoints a prime example. See our report: [US Utilities & Clean Tech: Massachusetts Offshore Wind 07 March 2023](#). Conversely and notwithstanding the PURA Aquarion ruling on March 15th, the relationship with Eversource and stakeholders was described as notably improved under the leadership of new CEO Joe Nolan. We are continuing to closely monitor the Connecticut legislative session where there has been a litany of bills introduced that could reform utility regulation. We provide thoughts in following sections.

We continue to view additional Connecticut utility regulation as a risk for shares of Eversource and Avangrid. Maintain Underperform.

Exhibit 1: ES Relative 2024E P/E versus Similar P/E Peers (Dark Blue) and Overall Utilities Index (Light Blue)

ES has de-rated to a discount vs the utilities sector



Source: Company Filings, Bloomberg, & BofA Global Research

BofA GLOBAL RESEARCH

Avangrid has underperformed utilities peers -6% and is trading at its relative lows but is still expensive. The company has large project, regulatory, capital markets, and pending M&A uncertainty that is not fully reflected in shares currently. Aside from the Connecticut risks, investors we have spoken to are concerned about the magnitude of equity issuances and asset sales embedded in the company's guidance currently.

Eversource is now trading at a discount on Consensus estimates which we view as appropriate given the lack of regulatory and balance sheet metrics that are below peers. After the latest weakness, ES has now underperformed the XLU -3% over the trailing five years, erasing the sharp relative rally that the stock enjoyed upon entering the offshore wind business. Our Underperform rating on ES remains a non-consensus sell-side call with 7 Buys/11 Neutrals/ 1 Sell per Bloomberg. Our investor conversations have revealed a growing unease with Eversource's outlook with the challenges in Connecticut and protracted offshore wind strategic review process.



ES and AGR Earnings Exposure

In the next two exhibits we show Eversource and Avangrid hypothetical earnings and EPS impact from using the 8.7% ROE and 51% equity ratio authorized in the Aquarion case to other subsidiaries. For transmission, only the equity ratio is flexed. This analysis assumes no degradation in the degree of regulatory lag or cost savings offsets.

Exhibit 2: Eversource Connecticut Scenario Analysis – 2025 Average Rate Base and Share Count

CL&P has the greatest potential exposure

Eversource Connecticut		Current	Potential	Delta	EPS
CL&P Average Distribution Rate Base		\$5,910	\$5,910		
ROE		9.2%	8.7%		
Equity Ratio		53.0%	51.0%		
Net Income		\$288	\$262	-\$26	-\$0.07
CL&P Average Transmission Rate Base		\$4,334	\$4,334		
ROE		11.4%	11.4%		
Equity Ratio		53.0%	51.0%		
Net Income		\$262	\$252	-\$10	-\$0.03
Yankee Gas Average Gas Rate Base		\$2,027	\$2,027		
ROE		9.3%	8.7%		
Equity Ratio		53.8%	51.0%		
Net Income		\$101	\$90	-\$11	-\$0.03
Aquarion Average Water Rate Base		\$1,402	\$1,402		
ROE		9.3%	8.7%		
Equity Ratio		51.5%	51.0%		
Net Income		\$67	\$62	-\$5	-\$0.01
Grand Total		\$718	\$666	-\$52	-\$0.14
Percentage of 2025 EPS					-2.9%

Source: Company Filings, Bloomberg, & BofA Global Research

BofA GLOBAL RESEARCH

For Avangrid we note that its disclosed earned ROEs use the actual equity ratios which are higher than authorized levels. This has the effect of increasing the denominator and lowering the depicted earned ROE.

Exhibit 3: Avangrid Connecticut Scenario Analysis. 2021 Earned vs Allowed. 2025 Average Rate Base and Share Count

AGR equity ratio has been higher than the allowed levels

Avangrid Connecticut		Earned	Actuals	@ Allowed Equity	Current	Potential	Delta	EPS
UIL Distribution Average Rate Base			\$1,240	\$1,240	\$1,490	\$1,490		
ROE		8.2%	9.10%	9.7%	9.1%	8.7%		
Equity Ratio			59.0%	50.0%	59.0%	51.0%		
Net Income			\$60	\$60	\$80	\$66	-\$14	-\$0.03
UIL Transmission Average Rate Base					\$910	\$910		
ROE					11.3%	11.3%		
Equity Ratio: 53-58%					55.0%	51.0%		
Net Income					\$57	\$52	-\$4	-\$0.01
Southern Connecticut Gas Average Rate Base			\$602	\$602	\$741	\$741		
ROE		9.8%	9.25%	10.2%	9.3%	8.7%		
Equity Ratio			54.0%	52.0%	54.0%	51.0%		
Net Income			\$32	\$32	\$37	\$33	-\$4	-\$0.01
Connecticut Natural Gas			\$515	\$515	\$602	\$602		
ROE		9.4%	9.30%	9.6%	9.3%	8.7%		
Equity Ratio			56.0%	55.0%	56.0%	51.0%		
Net Income			\$27	\$27	\$31	\$27	-\$4	-\$0.01
Grand Total					\$205	\$178	-\$27	-\$0.07
Percentage								-3.0%

Source: Company Filings, Bloomberg, & BofA Global Research

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PURA draft & final decision cast a shadow over rate cases

The +25bp ROE incentive for small water acquisitions was denied as PURA did not find that management met its burden of showing customer benefits. PURA approved \$992Mn rate base, slightly higher than the \$989Mn in the draft decision but below the \$1,049Mn request. The multi-year plan requesting +\$28Mn March 2023, +\$14Mn March 2024, and +\$9Mn March 2025 was denied as the PURA draws important distinctions between electric/gas and water regulation.

PURA denied \$4.9Mn Eversource-Aquarion merger cost recovery as ES did not demonstrate savings: "The Authority finds that the merger benefitted Aquarion, Eversource, and their shareholders, not the Aquarion ratepayers". Total O&M modification in the draft was -\$10.9Mn, 14% of the net company proposed \$79.6Mn. The largest denials were \$4Mn chemicals and power purchases, ~\$2Mn incentive compensation, ~\$1Mn inflation, and ~\$1Mn employee compensation. The chemicals & purchased power were not considered as they were in late filed exhibits and viewed by PURA as out of scope. At the open meeting, PURA stated that the chemical cost estimates were speculative. PURA also recommended denial of a litany of O&M costs including ~\$40k for entertainment at Webster Bank Arena.

PURA highlighted that it denied \$10.7Mn+ O&M requests and linked executive compensation to annual affordability metrics. While a relatively small amount at ~\$2.5Mn for executives and officers (~\$3.50 per year for the average customer), it shows a sharp focus on affordability. PURA critiqued Aquarion for failure to "develop any metrics or other methodologies by which to measure whether its rate and the resulting bills are affordable."

According to PURA (Docket No. 22-07-01):

The Company's Five-Year Capital Program provides no basis on which the Authority could conclude that the projected level of expenditures is reasonable or prudent. The Authority's prior admonitions about the Company's accelerating capital expenditures have gone largely unheeded. Consequently, the Authority will dispense with such perfunctory warnings and sanguine expectations for judicious capital expenditures. Instead, the Authority will simply, as it must, hold the Company to account.

PURA took issue with the \$879Mn 2022-2026 capex program which increases to \$200M from \$143Mn in 2022, describing prospective projects as potentially imprudent. "The Company's Five-Year Capital Program provides no basis on which the Authority could conclude that the projected level of expenditures is reasonable or prudent. The Authority's prior admonitions about the Company's accelerating capital expenditures have gone largely unheeded. Consequently, the Authority will dispense with such perfunctory warnings and sanguine expectations for judicious capital expenditures. Instead, the Authority will simply, as it must, hold the Company to account."

The Connecticut Attorney General issues a statement praising the PURA draft and final decisions denying the +30% rate increase request. Chair Gillett whose term is set to expire in March 2024 indicated that she will have the same level of scrutiny on UIL's pending rate case and a CL&P rate case if brought while she is still at PURA.

The PURA decision, in our view is negative for shares of ES in terms of financial impact as well as the cautious language used by PURA. PURA stated that it was "deeply concerned" by elements of the filing, implied Aquarion of 'burying' cost details, and stated "it must hold the Company to account".

Legislation the next area to watch



In recent weeks the Connecticut Legislature has focused on utility regulation and rates including hearings at the Energy and Technology Committee. PURA Chair Gillett testified including critical statements of CT utility regulation including describing the lack of CL&P rate case during her tenure "a travesty" (see reference above). Gillett's views are not new and largely consistent with her prior public statements. It remains to be seen whether the prospect of new performance-based rates (PBR) will influence utility earned rates of return with the framework still being determined. The media has also written unflatteringly about Eversource executive compensation in the light of increasing customer bills despite not being in customer rates.

Senate Bill 7 (SB7) is the key bill we are focused on now which appears to be a blend of Senate Bill 966 and Senate Bill 123. SB7 titled "An Act Strengthening Protections For Connecticut's Consumers Of Energy." If enacted we would view this bill cautiously as it would provide additional discretion to the PURA regarding areas such as decoupling, some rate case expenses, additional requirements for settlements, linkage between rate increases and executive compensation, as well as other factors. The draft bill would permit even broader discretion in setting a reasonable rate of return, allowing PURA to incorporate macroconditions, affordability/energy burden (energy costs dividend by household income), bad debt, and any other issue. Multi-utilities would not be permitted to have multiple general rate case applications pending at the same time without PURA approval. For example, Eversource could not have a CL&P and Yankee Gas rate pending at the same time.

ES/Orsted JV submits sole proposal in RI OSW solicitation

Eversource and Orsted A/S submitted a proposal for 884 MW Revolution Wind 2 wind project in Rhode Island's latest offshore wind solicitation. The Eversource and Orsted joint venture (JV) was the sole bidder in the offshore wind solicitation, a net positive for ES and Orsted as this implies lower competitive pressures and higher probability of proposal approval. The proposal comes amid Eversource's strategic review of its offshore wind portfolio. The company recently reaffirmed plans to pursue sales of its existing offshore wind projects and leases.

The project proposal for Revolution Wind 2, if approved, could theoretically shift or expand value of the existing Revolution Wind 2 offshore wind lease. We expect an approved project proposal paired with an offshore wind lease should capture a higher valuation, assuming Eversource pursues a sale of its portfolio. Recent discussions with management indicate strong preference to sell ES's offshore wind portfolio to potentially multiple buyers. *While we view ES's potential sale of its offshore wind portfolio as reducing business risk related to large projects and improving the balance sheet, it does increase regulatory risk. Still a net positive but we and investors are waiting on the announcement.*

MA Governor appoints new DPU Commissioners

Massachusetts Governor Maura Healey announced three new appointments to the MA Department of Public Utilities (DPU) on March 15th. Appointees include Jamie Van Nostrand, law professor at West Virginia University College of Law, Staci Rubin, VP of environment justice at the Conservation Law Foundation, and Cecile Fraser, acting chair of the DPU. The Administration emphasized that the 'next era' of the DPU would be characterized by transparency, equity and innovation. The Healey administration outlined goals for the new DPU, including helping the state to achieve its climate goals by facilitating the growth of the renewable energy industry, modernizing the electric grid and promoting energy resiliency, as well as making sure the DPU is fully staffed with employees who are independent of outside influence and who are experts in areas like rate affordability, consumer protection, emissions reductions and transportation safety.

Governor Healey has been outspoken in facilitating the clean energy transition including heading up efforts to assess the future of natural gas in Massachusetts during her time as Attorney General. The new DPU's focus on helping the state facilitate ambitious clean



energy targets appears supportive of incremental transmission and distribution (T&D) investment for Massachusetts utilities including NSTAR Electric (Eversource) and Fitchburg Gas and Electric (Unitil [UTL] subsidiary). However, we remain cautious on the read-throughs for incremental natural gas investment in MA.

[US Electric Utilities & IPPs: Future of MA Gas at risk? AG Healey takes aim at LDC growth ahead of midterms 14 June 2022](#)

Unregulated power less of an investor focus

The ISO-New England (ISO-NE) 17th forward capacity auction (FCA) cleared at \$2.59/kW-month for the Rest of Pool, one of the lowest to date and flat with FCA 16 (2025/2026). The dynamic delist bid threshold (DDBT) was relevant once again. ~750MW of new generation cleared which ISO-NE described as primarily wind, solar, storage, and demand response as part of the 5,000MW+ from this category out of 31,370MW that cleared.

We will be closely watching for capacity market reforms in New England as well as PJM given growing resource adequacy markets. The capacity accreditation proposals and potential for state/regional carbon pricing are key areas of uncertainty.

Mystic and Everett a quandary given need for fuel diversity

Another important area we are monitoring is the outlook for the Mystic Generating Station natural gas plant and related Everett LNG facility – both of which are owned by Constellation Energy (CEG). With the significant increase in LNG in 2022, the total costs of the Everett facility were multiples higher. Mystic 8 & 9 are operating under a cost of service agreement but the final recoverability of the Everett costs after the Mystic cost of service agreement remains unclear. Potential options include extending the Mystic cost of service agreement, closing the facility, a solution involving the natural gas utilities, a non-bypassable charge for the fixed costs of the Everett facility, or an alternative. We look for further insights from FERC this Summer. *We do not expect this to have a material impact on CEG but there are broader reliability implications in the region.*

BofA Global Research Reports

Title: Subtitle

[Eversource Energy: Capex up and EPS down. ES delivers \\$3.3Bn capex but LT guide disappoints](#)

[Eversource Energy: Remain Cautious on Prospects Post-IRA: How much capex can the team deliver?](#)

[US Utilities & Clean Tech: Offshore Wind Latest Headwind: Ørsted Impairs Sunrise Wind – ES Joint Venture](#)

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14 February 2023
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Exhibit 4: Primary stocks mentioned in this report

Prices and ratings for primary stocks mentioned in this report

BofA Ticker	Bloomberg ticker	Company name	Price	Rating
ES	ES US	Eversource Energy	US\$ 76.8	A-3-7
AGR	AGR US	Avangrid	US\$ 39.78	A-3-7

Source: BofA Global Research

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I, Paul Zimbardo, hereby certify that the views expressed in this research report accurately reflect my personal views about the subject securities and issuers. I also certify that no part of my compensation was, is, or will be, directly or indirectly, related to the specific recommendations or view expressed in this research report.



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Investment rating	Total return expectation (within 12-month period of date of initial rating)	Ratings dispersion guidelines for coverage cluster ^{R1}
Buy	≥ 10%	≤ 70%
Neutral	≥ 0%	≤ 30%
Underperform	N/A	≥ 20%

^{R1} Ratings dispersions may vary from time to time where BofA Global Research believes it better reflects the investment prospects of stocks in a Coverage Cluster.

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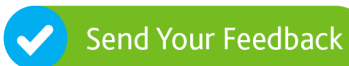
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Exhibit C to Horton Affidavit

ISSUER COMMENT

17 March 2023



RATINGS

Aquarion Water Company of Connecticut

Domicile	Bridgeport, Connecticut, United States
Long Term Issuer Rating	A3
Outlook	Stable

Aquarion Company

Long Term Issuer Rating	Baa2
Outlook	Stable

Source: Moody's Investors Service

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Aquarion Water Company of Connecticut

Connecticut regulator rejects Aquarion Water's requested rate increase, a credit negative

On 15 March, the Connecticut Public Utilities Regulatory Authority (PURA) approved a [final order](#) rejecting [Aquarion Water Company of Connecticut's](#) (AWC-CT, A3 stable) August 2022 rate application for a multiyear distribution rate increase. The rejection reflects a decrease of almost \$2 million in AWC-CT's annual revenue requirement effective 15 March compared with its request to increase revenue by \$49.9 million over 2023-25.

The regulator's final order is credit negative for AWC-CT because it will reduce its cash flow and weaken its credit metrics. It also signals a potentially less consistent and predictable regulatory environment in Connecticut, which may lead to a more contentious relationship between AWC-CT and state regulators. AWC-CT's August 2022 rate application was its first since receiving its last rate case decision in September 2013.

AWC-CT had sought rate increases of \$27.5 million effective 15 March 2023, \$13.6 million for 2024 and \$8.8 million for 2025 based on a historical test year of 2021. PURA's decision was based on an authorized return on equity (ROE) of 8.7%, which is below the industry average and substantially lower than AWC-CT's request of 10.35% as well as its preceding authorized ROE of 9.63%. Historically, AWC-CT was also allowed a 50 basis point premium on its ROE for acquiring small water systems, but the order no longer allows for this rate adder. The equity ratio was set at 50.35%, lower than the utility's preceding authorized equity ratio of 51.53% and its request of 53.06%.

More positively, AWC-CT's water infrastructure conservation adjustment (WICA) was maintained and reset to zero. The WICA mechanism can be adjusted between rate case proceedings, not to exceed 5% annually or 10% in total, and provides AWC-CT with timely recovery of allowed costs associated with WICA-eligible capital projects placed in service, including replacement and rehabilitation of existing water infrastructure.

AWC-CT continues to operate in a highly capital-intensive business environment with a focus on maintaining a reliable distribution network and water quality for customers. We expect its capital investments to remain elevated, in particular to meet the Environmental Protection Agency's most recent [announcement](#) to propose [national drinking water standards](#) for six per- and polyfluoroalkyl substances. As a result, ongoing regulatory support to provide timely recovery of investments through mechanisms such as the WICA is important in maintaining the utility's financial profile.

We expect AWC-CT to appeal the rate order or file another rate case this year in an effort to revisit its annual authorized revenue requirement, allowed ROE and equity ratio, among other things. The decision was not unanimous, and subsequent comments by the dissenting

commissioner strongly suggest opposing views and a level of contentiousness among the three regulators. Although the order will weaken its near-term cash flow coverage metrics, the longer-term effect is less certain, particularly if AWC-CT files another rate case proceeding this year. The pancaking of rate case proceedings year after year could create a more contentious relationship between the utility, PURA and other key intervening parties, leading to another unsupportive rate case outcome.

Historically, AWC-CT has maintained a solid financial profile, with key credit metrics that support the current rating. For the 12 months ended 30 September 2022, its ratio of funds from operations (FFO) to net debt was 17.8%, lower than its ratio of FFO to net debt of 20%-22% for the period 2017-21. We expected the utility's financial metrics to weaken from historical levels, mainly due to an increase in debt to help finance its elevated capital investment program. Without mitigating actions by management, the outcome of the rate order could cause its key credit metrics to decline further and weaken its credit quality.

Headquartered in Bridgeport, CT, Aquarion Water Company of Connecticut is the principal operational subsidiary of [Aquarion Company](#) (Aquarion), an intermediate holding company wholly owned by [Eversource Energy](#) (Baa1 negative). AWC-CT is a regulated water utility serving approximately 207,000 customers in 56 cities and towns, mainly in areas of western Connecticut including the cities of Bridgeport and Stamford. Aquarion also owns three other smaller water utilities: Aquarion Water Company of New Hampshire, Abenaki Water Company and Aquarion Water Company of Massachusetts, which collectively serve around 19,000 customers. AWC-CT accounts for more than 90% of intermediate holding company Aquarion's revenue and operating income.

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RRA REGULATORY FOCUS

Conn. decision indicates more restrictive regulatory climate for water utilities

Tuesday, March 21, 2023 4:17 PM ET

By Heike Doerr
Market Intelligence

In a March 15 final decision, the Connecticut Public Utilities Regulatory Authority authorized a somewhat larger rate reduction for Aquarion Water Co. of Connecticut Inc. than it had in a Feb. 16 proposed decision.

The Take

- The Connecticut Public Utilities Regulatory Authority (PURA) rejected Aquarion Water Co. of Connecticut's (AWC-CT's) \$61.3 million multiyear rate increase request and authorized a single-step rate reduction of \$2.0 million. The PURA's final decision was largely consistent with the previously issued proposed decision, but due to certain changes in expense items and modest rate base modifications, the final decision rate decrease is \$1.6 million greater than in the proposed decision.
- The decision specifies an 8.70% return on equity, which is the lowest ROE authorized for a water utility since 2010 as tracked by Regulatory Research Associates, excluding a punitive 2020 decision. While ROEs authorized in Connecticut have historically been below the prevailing industry average as calculated by RRA, this decision is considerably below the national average, which has been trending upward. Despite past precedent, the PURA denied the utility's proposed ROE premium adjustment for acquiring various nonviable water systems.
- Regulators were critical of the company's capital spending efforts and cautioned Aquarion that prudence of infrastructure investments could be a concern in future proceedings.
- RRA has lowered its rating of the Connecticut regulatory environment for water utilities, to Average 3/from Average/1 based on this final order. Investors will likely be more cautious of a regulatory climate that discourages capital investments and offers a lower return on those investments than other jurisdictions.

AWC-CT, the largest water subsidiary of Eversource Energy, serves approximately 207,000 customers across Connecticut and represents over 90% of Eversource's water revenues and customers. Despite the expansion of the company's water business through acquisitions and its capital expenditure program, the water segment accounts for less than 5% of the wider company's rate base and earnings.

The PURA's final decision orders AWC-CT to reduce rates by \$2.0 million based on an 8.70% return on equity (50.35% of capital) and a 6.46% return on a rate base valued at \$991.7 million. Compared to the proposed decision, rate base was modestly increased by \$2.3 million. Subsequent revisions to accumulated depreciation, deferred taxes and certain smaller operating items reduced the revenue requirement by about \$1.6 million more than the proposed decision.

The PURA found that AWC-CT had failed to provide evidence demonstrating savings due to the merger, and as a result, the order denied company's request to recover \$4.9 million of transaction costs.

The order was approved 2 to 1, with Commissioner John "Jack" Betkoski, former President of the National Association of Regulated Utility Commissioners and former Chair of its water committee, dissenting. In comments filed with the dissent, Betkoski said "[a]t a time when Connecticut is very successfully encouraging business growth & job creation in our state this decision represents a punitive & anti-business practice message from the state government."

In a press release lauding the decision, Attorney General William Tong said that it "is an aggressive pro-consumer decision by PURA. Connecticut families pay far too much for their utilities. This relief is well-timed and sorely needed."

RRA lowers rating of Connecticut regulatory environment

RRA has lowered its rating of the Connecticut regulatory environment for water utilities, to Average 3/from Average/1 as a result of this rate order. Investors should take caution investing in a regulatory climate that authorizes a return on equity that is below the national average at the time established and discourages future capital investment. The PURA characterized its previous comments on AWC-CT's accelerated capital spending program as "admonitions that have gone largely unheeded." Such a warning signals that recovery of future capital investments may be more challenging in future base rate proceedings.

Historical test years are utilized in Connecticut and companies are unable to incorporate investments put into service beyond the test year, as seen in both this proceeding and in Connecticut Water Co.'s July 2021 decision, making it difficult to earn authorized returns. The use of a revenue adjustment mechanism and infrastructure surcharges have somewhat offset regulatory lag. As shown in the table below, base rate proceedings have been litigated rather than settled.

While the state's water utilities have largely avoided the regulatory focus and penalties that electric utilities have faced related to weather events, the tone of the AWC-CT order seems to reflect a punitive stance from the PURA towards Aquarion's parent, Eversource Energy. In a discussion regarding the company's proposed programming to assist low-income customers, the PURA questioned why the company did not leverage the experience of affiliated companies that had been ordered to implement a low-income discount rate.

Water utility mergers between in-state companies have historically been permitted with minimal conditions. The PURA approved Eversource Energy's acquisition of Aquarion Water in 2017 without onerous conditions as well as multiple recent smaller transactions. However, the PURA disallowed the recovery of transaction costs, finding that the acquisition benefited Eversource shareholders rather than ratepayers, and the companies had failed to provide evidence demonstrating savings due to the merger. In contrast, SJW Group's acquisition of Connecticut Water Service met with heightened concerns and multiple conditions, but the PURA found that the company had taken a "thoughtful and thorough" approach to merger savings.

Legislation enacted in 2020 increases the statutory time frame for PURA to render a decision on mergers, acquisitions or changes in control.

Connecticut does not have a legislative mechanism to facilitate the acquisition of municipal systems using a market-based valuation. Such legislation has stalled multiple times, lacking support from the PURA. The previous regulatory incentive, in the form of ROE premium for larger, better-capitalized water companies that resolve statewide water issues by acquiring troubled systems, were rejected in Connecticut Water and AWC-CT's most recent rate decisions. Water utilities are less incentivized to consolidate smaller water utilities in a regulatory climate that discourages accelerating investments and offers a lower return on those investments than other jurisdictions.

ROE discussion

The 8.70% ROE authorized by the PURA does not include a premium for flotation costs or an ROE adder for acquiring and taking over the operation of four small water systems since 2013, which AWC-CT said were economically nonviable. The PURA found that "Aquarion did not demonstrate that the acquisitions would provide benefits to customers by enhancing system viability or by avoiding capital costs or savings in operating costs," as required under state statute.

AWC-CT's proposed 10.35% ROE included a 7-basis-point flotation cost premium and a 25-basis-point premium for acquiring nonviable water systems.

The Office of Consumer Counsel (OCC) supported a 9.02% ROE, which did not include a flotation cost premium or ROE adder for acquiring troubled systems.

RRA estimates that the difference between the 8.70% ROE authorized by the PURA and the company's proposed 10.35% ROE lowered the revenue requirement by about \$14 million.

In his dissenting opinion, Commissioner Betkoski stated, "ROE calculations are not an exact science ... but an over 80 basis point reduction is substantially lower than the OCC's and I think it should be higher as interest rates are projected to continue their increase. By reducing the ROE below usual standards - a massive signal to discourage vital investment in water infrastructure and protection for public health, environment, and safety."

In the company's prior rate case, decided in 2013, the PURA established a 9.63% ROE for AWC-CT, which included a 50-basis-point acquisition premium related to acquisition of so-called troubled systems.

Comparing Connecticut ROEs to national averages

The authorized 8.70% return on equity is almost 90 basis points below the average of the ROEs approved in water utility rate cases completed nationwide in 2022. In 2022, 10 water utility rate cases were completed with an average ROE of 9.61%. The approved ROEs ranged from 9.10% to 10.00%.

In 2021, 10 water utility rate cases were completed, with cost-of-capital parameters and authorized rate base values disclosed in just half of these proceedings. They had an average ROE of 9.46%. The lowest ROE authorized in 2021 was approved by the PURA in a litigated proceeding for Connecticut Water. The authorized rate increase was based on a 9.00% ROE, which included a 15-basis-point premium related to flotation costs but did not include a requested 50-basis-point adder for acquiring and taking over the operation of smaller water systems.

In 2020, only eight major water utility rate cases were completed with an average authorized ROE of 9.04%. Excluding a punitive equity return authorization of 7.46% in a South Carolina proceeding, the 2020 water utility average ROE would have been 9.36%. In the South Carolina proceeding, the commission imposed a performance penalty, but did not specify the magnitude of the penalty.



The ROEs approved in water utility rate decisions in Connecticut historically have been below the national average at the time established, and recent decisions have shown a declining ROE in the state as the national average has trended upward. Refer to this industry document for data spanning over 175 rate proceedings from a period between January 2010 and December 2022.

Both AWC-CT and Connecticut Water have stayed out of base rate proceedings for a decade, making their recent proceedings more laborious endeavors. Both companies have indicated an interest in filing rate cases more frequently going forward.

Connecticut rate case proceedings

Company	Parent company ticker	Order date	Decision type	Rate increase (\$M)	Rate increase (%)	Return on rate base (%)	Return on equity (%)	Common equity/ total cap (%)	Test year end	Rate base (\$M)
Connecticut Water Co.	SJW	07/14/10	Litigated	8.0	12.7	7.32	9.75	45.72	12/31/08	230
Aquarion Water Co. of Connecticut	ES	09/08/10	Litigated	15.2	11.3	7.89	9.95	50.00	12/31/09	506
Aquarion Water Co. of Connecticut	ES	09/24/13	Litigated	13.9	8.6	7.50	9.63	51.53	12/31/12	609
Connecticut Water Co.	SJW	07/28/21	Litigated	5.2	5.1	6.47	9.00	52.73	12/31/19	541
Aquarion Water Co. of Connecticut	ES	03/15/23	Litigated	(2.0)	(1.0)	6.46	8.70	50.35	12/31/21	992

As of Mar. 16, 2023.

Source: Regulatory Research Associates, a group within S&P Commodity Insights.

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PURA highlights concerns related to capital investments

The PURA expressed concern that the company's "level of investment substantially exceeds the amount projected" in the company's 2013 rate case. Since then, AWC-CT has made approximately \$800 million in plant additions through Aug. 31, 2022.

In highlighting the accelerated investment spending, the PURA said, "[a]t that time, the Authority expressed concern about the company spending \$287 million as part of its five-year capital plan covering 2013–2017. In fact, the Authority cautioned the company that annual capital improvement spending from 2011–2013 had already increased by almost 50% from the \$40 million in annual investment for 2008–2010. Nonetheless, despite the Authority's determination that the company 'should be scaling back,' the company exceeded even its own projections, spending \$312 million (\$57 million per year) from 2013–2017. Since then, capital additions have ballooned to \$116 million per year on average."

The final order, similar to the proposed decision, limited the inclusion of plant additions between the Dec. 31, 2021, end of the test year and Aug. 31, 2022, stating that the "evidence to support the inclusion of capital additions completed subsequent to August 31, 2022, is deficient."

For 2022–2026, AWC-CT intends to spend approximately \$878.6 million on capital improvements. The PURA noted that the company provided "no basis on which the Authority could conclude that the projected level of expenditures is reasonable or prudent. The Authority's prior admonitions about the company's accelerating capital expenditures have gone largely unheeded. Consequently, the Authority will dispense with such perfunctory warnings and sanguine expectations for judicious capital expenditures. ... The burden will be on the company to demonstrate that its aggregate capital expenditures are prudent, reasonable and protect the relevant public interests, both existing and foreseeable. There is certainly no evidence in this proceeding to support such a conclusion at this time."

In his dissent, Commissioner Betkoski said disallowing these investments "will tell investors to spend their money elsewhere. Not in Connecticut." He went on to comment on the proposed decision, "even the tone of the writing seemed to me to be contemptuous and perhaps condescending."

National water utility cap ex trends

Aquarion's capital spending program is not out of line with industry peers.

Across the small investor-owned water utility industry, total capex is forecast to increase 6.5% in 2023 to approximately \$4.6 billion and will likely remain above \$4.3 billion in 2024. In recent years, the segment has experienced considerable growth, with 2022 infrastructure investments rising 18% compared with 2021.

The water utility sector's largest investment has been, and continues to be, upgrading the nation's aging distribution systems. Utility regulators have largely understood the high level of investment needed to replace aging infrastructure and have supported water and wastewater utility capital expenditure budgets at levels significantly above annual depreciation.

Rate case background

On July 1, 2022, AWC-CT filed a notice of intent indicating that it expected to file an application to increase rates within 30 to 60 days.

On Aug. 29, 2022, AWC-CT filed its formal rate request request for a multiyear rate plan. The company sought increases of \$27.5 million, or 13.9%, effective March 15, 2023; an additional \$13.6 million, or 6.1%, effective March 15, 2024; and an additional \$8.8 million, or 3.7%, effective March 15, 2025. The year-one rate increase was based on a 10.35% return on equity (53.06% of capital) and a 7.5% return on a rate base valued at \$1.012 billion for the period ended Aug. 31, 2022.

In testimony filed on Oct. 26, 2022, the OCC initially supported a \$6.7 million rate increase based on a 9.02% return on equity (50.15% of capital) and a 6.55% return on rate base of \$999.0 million for the period ending March 14, 2024.

In late filed exhibits submitted Dec. 19, 2022, AWC-CT amended its year-one rate increase request to \$38.9 million effective March 15, 2023, while maintaining its proposed year-two and year-three requests.

In its updated filing, the OCC's revised rate increase would increase rates by \$8.2 million.

In a proposed decision, issued on Feb. 15, the PURA called for a \$0.4 million rate decrease based on an 8.70% return on equity (50.35% of capital) and a 6.46% return on a rate base valued at \$989.4. The proposed decision rejected AWC-CT's request for a multiyear rate plan and found that the acquisition of Aquarion Water by Eversource in 2017 benefited shareholders rather than ratepayers.

The PURA's March 15 final decision reiterated the PURA's stance with respect to most items, including the authorized ROE, rejection of the multiyear rate plan and the impact of the Eversource acquisition. However, the PURA adopted revisions to depreciation expense and tax adjustments and certain smaller items that reduced the revenue requirement by about \$1.6 million, resulting in an overall \$2.0 million rate decrease based on rate base of \$991.7 million.

RRA rating process

Regulatory Research Associates evaluates water utility regulation in 22 state jurisdictions and monitors rate proceedings involving rate change requests of at least \$1.0 million for the 12 largest investor-owned and privately held water utilities.

RRA maintains three principal rating categories — Above Average, Average and Below Average — with Above Average indicating a relatively more constructive, lower-risk regulatory environment from an investor viewpoint and Below Average indicating a less constructive, higher-risk regulatory climate.

Within each principal rating categories, the numbers 1, 2 and 3 indicate relative position. The designation 1 indicates a stronger or more constructive rating from an investor viewpoint; 2, a midrange rating; and 3, a less constructive rating.

Hence, if you were to assign numeric values to each of the nine resulting categories, with a "1" being the most constructive from an investor viewpoint and a "9" being the least constructive from an investor viewpoint, then Above Average/1 would be a "1" and Below Average/3 would be a "9."

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Exhibit E to Horton Affidavit

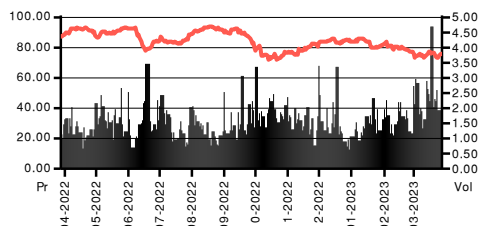
Rating: Buy
Price Target: \$84.00

Price Target Metrics:

17x '25 EPS for electric/gas utilities less parent (3% premium to 16.5x anchor P/E) and 26.4x for '25 water EPS

Current Price:	\$75.86
Float:	347.2MM
Diluted Shares:	349.3MM
Short Interest:	4.4MM
Average Daily Volume:	2,129k
52 Week Range:	\$70.54 - \$94.63
Market Cap:	\$26,495MM
Cash and Investments:	\$48MM
Debt:	\$22,530MM
Enterprise Value:	\$48,977MM

PRICE & VOLUME CHART



ESTIMATES \$ (MMs except multiples & EPS)

	2022		2023		2024		2025
	Prior	New	Prior	New	Prior	New	New
EPS (Diluted)							
Q1 (Mar)	\$1.30	\$1.30A	\$1.26	\$1.35E	\$1.35	\$1.35E	\$1.44E
Q2 (Jun)	\$0.86	\$0.86A	\$1.67	\$0.91E	\$1.01	\$1.00E	\$1.07E
Q3 (Sep)	\$1.01	\$0.99A	\$1.22	\$1.06E	\$1.31	\$1.31E	\$1.40E
Q4 (Dec)	\$0.93	\$0.94A	\$0.20	\$1.02E	\$1.01	\$1.00E	\$1.07E
FY	\$4.10	\$4.09A	\$4.36	\$4.34E	\$4.68	\$4.65E	\$4.99E
P/E		18.5x		17.5x		16.3x	15.2x
Dividends Per Share							
FY	\$2.55	\$2.55A	\$2.69	\$2.70E	\$2.84	\$2.86E	\$3.04E
Dividend Yield		3.4%		3.6%		3.8%	4.0%

Eversource Energy

(NYSE: ES)

Court appeal of Aquarion's revenue cut is essential ahead of ES's '25 electric rate case in CT; trimming PT to \$84

Summary:

In a recent interview, PURA Chair Gillett described a recent rate cut for Aquarion, ES's water utility in CT, as her "attempt to show" "what (she) could do if given the opportunity to go through a rate case with a lot of these utilities". We expect Aquarion to appeal the rate case decision to the CT Superior Court, but in the meantime, we trimmed our '23/'24 EPS estimates for ES to reflect lower water earnings in CT. A positive outcome of Aquarion's appeal should be essential for ES's '25 electric rate case in CT, especially if SB 7 is adopted by the CT General Assembly and Chair Gillett remains at PURA after her term expires in March '24. Despite the regulatory and earnings risk in CT, ES should regain a P/E premium once it announces a sale of its offshore wind investments. Our new PT of \$84 (down from \$86) reflects a 3% '25 P/E premium to our '25 anchor P/E of 16.5x, and ES currently trades at a 2% '25 P/E discount to an average utility.

Highlights

Sale of offshore wind assets: ES is selling its 50% stake in 1.76GW of contracted offshore wind projects and ~175,000 acres of undeveloped/unallocated offshore wind leases. ES sees no need to write down its offshore wind investments, so management must expect to recover at least the money it will have spent on the three contracted projects and the unallocated acreage (\$2B+ as of late Feb '23). We had expected the sale process to conclude almost three months ago, and higher interest rates and now credit spreads didn't help. Management is now likely to sell the South Fork project, Revolution and Sunrise projects, and the undeveloped acreage in three separation transactions. We expect the sale proceeds to pay down the holdco debt issued to develop/construct the offshore investments with little (~\$100MM) left for EPS-accretive investments at ES.

CT - Aquarion's revenue decrease: ES's water utility was forced to file a rate case in CT in '22 after the state regulator (PURA) rejected the utility's latest WICA surcharge request. The PURA insisted that Aquarion reached a 10% WICA cap back in Apr '21, but we saw the WICA rejection as a sign a rate cut was coming for ES's water utility in CT. In a 2-1 decision, the PURA reduced Aquarion's revenue by \$2MM vs. a \$37MM revenue increase requested under a three-year rate plan. The regulator was concerned about Aquarion's rapidly growing investment plan, and the fact that the utility never proved its capex was prudently spent. To us, the PURA backed into an 8.7% allowed ROE to solve for a rate decrease at Aquarion as PURA's Chair continues her regulatory and legislative campaign against ES. In a recent TV interview the PURA Chair described the outcome of the Aquarion rate case as her "attempt to show" "what (she) could do if given the opportunity to go through a rate case with a lot of these utilities". We expect Aquarion to appeal the rate case decision to the CT Superior Court, but in the meantime, we trimmed our ES estimates to reflect lower water earnings in CT.

CT - ES's next electric rate case and SB 7: Under a '21 settlement, ES is not required to file an electric rate case in CT until '25 though PURA Chair Gillett, whose current term expires in March '24, encouraged ES to come in for a rate case sooner. A positive outcome of Aquarion's likely court appeal could be essential for ES's future electric rate case in CT, especially if SB 7 is adopted. In its current version, SB 7 or "An Act Strengthening Protections For CT Consumers Energy" would mandate electric/gas/water rate cases at least every four years, limit rate case settlements and allow PURA's

decisions to incorporate the burden of energy costs on residential customers, among others.

Trimming '23/'24 estimates and PT: Our new '23/'24/'25/'26 EPS estimates are \$4.34/4.65/4.99/5.30 vs. \$4.36/4.68/4.99/-, previously. We trimmed our '23-'24 EPS estimates to reflect lower earnings at Aquarion. ES trades at a 2% '25 P/E discount to an average utility vs. a historical premium of ~10%. Despite the regulatory and earnings risk in CT, ES should regain a P/E premium once it announces a sale of offshore wind investments. Our new PT of \$84 (down from \$86) reflects a 3% '25 P/E premium to our '25 anchor P/E of 16.5x.

Company Description:

ES operates six electric/gas/water utilities in New England (MA, CT, ME and NH) serving ~4m customers. ES also pursues electric transmission investments in CT, MA and NH. Through a JV with Orsted, ES owns a 50% equity interest in 1.7GW of development-stage offshore wind projects in NY/RI/CT which should start operations in mid-2023 through late-2024. ES is about to sell its stake in the JV.

ES: EPS by segment (\$)

ES						2023-2026
	2022A	2023E	2024E	2025E	2026E	CAGR
Electric distribution	1.71	1.80	1.86	1.94	2.01	4.2%
Electric transmission	1.72	1.80	1.89	1.98	2.05	4.5%
Gas distribution	0.67	0.77	0.93	1.08	1.25	16.6%
Water distribution	0.11	0.11	0.12	0.13	0.14	7.2%
Parent/other	-0.12	-0.14	-0.14	-0.15	-0.15	5.7%
Total EPS (\$)	4.09	4.34	4.65	4.99	5.30	6.7%
DPS (\$)	2.55	2.70	2.86	3.04	3.24	6.2%
Dividend payout	62%	62%	61%	61%	61%	

Source: Company data for 2022; Seaport Research Partners

ES: '25 SOTP valuation (\$)

ES	'25 EPS	Multiple	Value/sh	Anchor PE	P/E premium
Electric/gas T&D less parent	\$4.86	16.9x	\$82.11	16.50x	2.5%
Water distribution	\$0.13	16.9x	\$2.22	16.50x	2.5%
Equity value/share			\$84.34		

Source: Seaport Research Partners

ES (\$MM except per share)	2022A	2023E	2024E	2025E	2026E
Gross Margin	2,213	2,294	2,315	2,347	2,353
EBIT	2,213	2,294	2,315	2,347	2,353
EBITDA	2,213	2,294	2,315	2,347	2,353
Interest Expense	(678)	(697)	(683)	(698)	(712)
Other Income	346	393	521	676	851
Net Income	\$1,427	\$1,529	\$1,652	\$1,785	\$1,913
S/O	347	351	353	357	359
EPS	\$4.09	\$4.34	\$4.65	\$4.99	\$5.30
DPS	\$2.55	\$2.70	\$2.86	\$3.04	\$3.24

Total CFFO	\$2,658	\$3,090	\$3,361	\$3,609	\$3,754
Total CFFI	(\$4,996)	(\$1,703)	(\$3,839)	(\$3,880)	(\$4,201)
Debt issuances (net)	\$2,759	(\$636)	\$1,237	\$1,103	\$1,361
Dividends	(\$883)	(\$946)	(\$1,010)	(\$1,083)	(\$1,164)
Shares Issued	\$245	\$195	\$250	\$250	\$250
Total CFFI	\$2,122	(\$1,387)	\$478	\$271	\$447
Starting Cash	\$221	\$5	\$5	\$5	\$5
Change in Cash	(\$216)	(\$0)	\$0	\$0	\$0
Ending Cash	\$5	\$5	\$5	\$5	\$5

Total Current Assets	\$3,208	\$3,208	\$3,208	\$3,208	\$3,208
Net PPE	\$37,179	\$39,831	\$42,367	\$44,891	\$47,682
Goodwill	\$4,477	\$4,477	\$4,477	\$4,477	\$4,477
Regulatory Assets	\$4,138	\$3,543	\$3,379	\$2,354	\$1,760
Other	\$3,185	\$3,470	\$3,520	\$3,785	\$3,949
Total Assets	\$52,188	\$54,530	\$55,015	\$58,716	\$61,076
Total Current Liabilities	\$5,847	\$5,847	\$5,847	\$5,847	\$5,847
Long Term Debt	\$19,783	\$19,147	\$20,384	\$21,487	\$22,848
Other	\$10,412	\$10,412	\$10,412	\$10,412	\$10,412
Total Liabilities	\$36,496	\$35,860	\$37,097	\$38,200	\$39,561
Preferred Stock	\$156	\$156	\$156	\$156	\$156
Shareholder's Equity	\$15,536	\$18,515	\$19,408	\$20,360	\$21,360
Total Liabilities and OE	\$52,188	\$54,530	\$55,015	\$58,716	\$61,076

Eversource Energy (ES) Disclosures

I, Angie Storozynski, hereby certify: (1) that all of the views expressed in this report accurately reflect my personal views about any and all of the subject securities or issuers; and (2) that no part of my compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views expressed in this report.

As with all employees of Seaport Global Securities LLC, a portion of our analysts' compensation is paid from the total collection of revenues from all areas of the firm including but not limited to Investment Banking and Sales and Trading departments. In no instance are research analysts' compensation directly derived from Investment Banking revenues.

Risks & Considerations for Eversource Energy (ES)

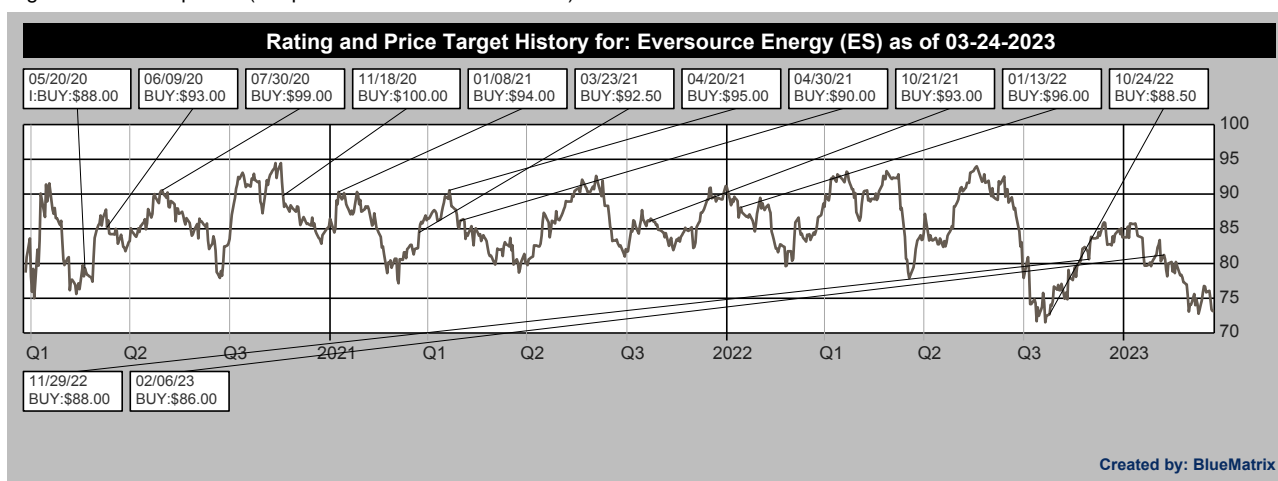
Proposed sale of offshore wind assets and equity needs: We now expect ES to raise \$2.2B for the three offshore wind projects with PPAs and undeveloped acreage. That's \$650MM less than we originally expected, hence ES should need to restart its ATM-based equity issuances in '24. We lowered our '24/'25 to reflect \$250MM in equity annually.

Growth capex at ES's regulated electric/gas utilities could fall if sharply higher electric/gas rates persist beyond '23: ES's MA electric rate case was resolved in late '22, and we don't expect another rate case in CT until '25 (at the earliest).

Rate case outcomes are hard to predict: While regulated utilities are allowed to recover prudently incurred costs, its up to state utility regulators to determine which costs are in fact recoverable and the return on regulated assets. Some rate case requesting higher revenues may end with a reduction in authorized rates thus revenues and thus earnings.

Price Target Metrics for Eversource Energy (ES)

17x '25 EPS for electric/gas utilities less parent (3% premium to 16.5x anchor P/E) and 26.4x for '25 water EPS



Please contact Seaport Global Securities LLC, for important disclosure information for covered companies. Contact the Director of Equity Research at (949) 274-8052 or write to Seaport Global Securities LLC, 100 Bayview Circle, Suite 100, Newport Beach, CA 92660.

Clients should also refer to <https://sgsecurities.bluematrix.com/sellside/Disclosures.action> for price charts, as well as specific disclosures for covered companies.

Explanation of Ratings

Seaport Global Securities analyst ratings include (effective Feb. 1, 2017):

Buy - The investment outlook and risk/reward over the following 12 months are favorable on an absolute basis and relative to the peer group.

Neutral - The investment outlook and risk/reward over the following 12 months are neutral on an absolute basis and relative to the peer group.

Sell - The investment outlook and risk/reward over the following 12 months are unfavorable on an absolute basis and relative to the peer group.

NA - A rating is not assigned.

Prior to Feb 1., 2017, Seaport Global Securities analyst ratings included:

Buy - The investment outlook and risk/reward over the following 12 months are very favorable on an absolute basis and relative to the peer group.

Speculative Buy - The investment outlook over the following 12 months is very favorable on an absolute basis and relative to the peer group, however, there is higher than average risk associated with the investment that could result in material loss.

Accumulate - The investment outlook and risk/reward over the following 12 months are favorable on an absolute basis and relative to the peer group.

Neutral - The investment outlook and risk/reward over the following 12 months are neutral on an absolute basis and relative to the peer group.

Reduce - The investment outlook and risk/reward over the following 12 months are unfavorable on an absolute basis and relative to the peer group.

Sell - The investment outlook and risk/reward over the following 12 months are very unfavorable on an absolute basis and relative to the peer group.

NA - A rating is not assigned.

Ratings Distribution

Rating	Research Coverage		Investment Banking Clients*		
	Count	% of Total	Count	% of Total	% of Rating Category
Buy	145	66.2%	7	58.3%	4.8%
Neutral	73	33.3%	0	0.0%	0.0%
Sell	1	0.5%	0	0.0%	0.0%
Total	219	100.0%	12	100.0%	5.5%

*Investment banking clients are companies for which Seaport Global Securities LLC provided investment banking services to in the last 12 months.

Note: Ratings Distribution as of December 31, 2022

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